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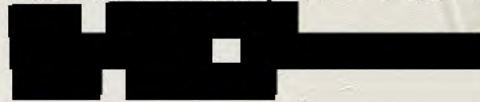
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MERIT SELECTION

(A Presentation Prepared for the Judicial Selection Symposium,
University of Houston Law School, Houston, Texas, Feb. 24, 1990)

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I. Introduction

When I spoke with Dean Douglas about this presentation, we initially discussed that idea that I should talk about the strengths and the weaknesses of merit selection systems. After a brief conversation, it became clear that there was another point that needed to be discussed as well. That is the issue of what we don't know about merit selection.

Initially, let me begin by saying that there is a great deal of conventional wisdom or impressionistic information about merit selection. Many of the law reviews and the bar journals are filled with these collections of folk wisdom and impressions. That folk wisdom and those impressions of course, may be valid. However, we simply don't know for sure.

I will try to avoid discussion of that type of information on merit selection and instead focus on hard data about merit selection that has been developed from cross state studies or single state studies.

II. Accountability and Independence

Political scientists, unlike much writing on this topic by lawyers and judges, think about merit selection in terms of a continuum of accountability vs. judicial independence. That is, the idea of merit selection represents a compromise between two competing values regarding the role of judges in American society. One value, probably best exemplified by the partisan election system such as exists in Texas, stresses the idea that judges should be accountable to voters through the electoral process. The other value, probably best exemplified by the federal appointive system, is that judges should be removed from the electoral process and thus independent from direct electoral pressures.

At least from the perspective of political scientists, it is a value judgement as to whether accountability or independence is most desirable. It is not a factual question as to whether

judges should be accountable or independent; rather it is a "should" question.

With that framework in mind, one can see merit selection as a compromise between these two values of accountability and independence. On the one hand, merit selection stresses that there is an appointive system. That is, the governor appoints one of the nominees of the selection commission--in that sense, of course, it is a restricted appointive system, since the governor's choice is limited to the commission's nominees, but nevertheless, it is an appointive process. On the other hand, there is an element of accountability to the electorate through retention elections where the judge runs for a specified term of office, although it is a restricted electoral system in that the judge has no opponent when he or she does run for office.

In essence, this compromise system emphasizes two main features. One is a filter on the appointive power of the governor which is the selection commission and the second is the restricted election after appointment and after service as a judge which is called the retention election.

In the literature, one sometimes sees efforts to modify these two basic aspects of merit selection systems. For example, Glenn Winters, who was probably the leading advocate of merit selection, once argued that with the growth of strong state commissions on judicial conduct, the need for retention elections had disappeared since there was now a new mechanism for removing "bad" judges. California has a modification of that basic framework in that the commission in California functions as a veto commission over the governor's choice of a judge rather than as a filter over the governor's choice. It is a system, by the way, that Professor Henry Abraham, suggests works poorly since the veto commission seems reluctant to challenge a governor over his choices. Illinois has a system where judges initially run in partisan elections, but once elected to that office, they then run in retention election, where, interestingly enough, judges must get 60% of the vote instead of the usual 50% +1. This system has been largely unstudied, but it appears to be a compromise system that in part reflects a distrust of the first half of the "pure" merit selection system, the filtering commission. New Mexico has a very new version of merit selection where judges are selected through the commission system--appointive process, then run in a partisan contested election, and then, if successful, run in later elections that are retention elections. Other states have put together their own versions of merit selection, some like Illinois, New Mexico and California, that are such hybrids that the purists do not recognize them as merit selection systems.

In reference to merit selection system, an important point should be made. A point that is hardly ever made. Research on merit selection is sometimes case study work where one examines the functioning of the system in one state. The classic work of this

nature is Watson and Downing's work on the functioning of merit selection in the state of Missouri. However, much contemporary work on merit selection looks at the effects of this system across states. That raises some interesting issues because states have such a variety of plans, there may be comparability problems that have largely been ignored. For example, some states with merit selection plans have senatorial confirmation of the governor's choice; some do not. Some states have lay control of commissions; some lawyer control. Some states have judges on the commissions; some do not. Some states allow the governor to reject the commission's nominees and request one or more additional slates; some do not. There is considerable variation in the size of commissions. There is considerable variation in who chooses the choosers which may be the prime or at least one of the prime issues in any merit selection debate. Some merit selection plans have been imposed through executive order; some by statute; some by constitutional amendment. Some merit selection plans contain an admonition that nominees should be selected with consideration of the racial and gender make-up of the community. The interesting question, of course, is what difference do these numerous variations in merit selection plans have on the characteristics of judges. The answer is that from an academic perspective, we don't know. There is some case study data that lay persons on commissions defer to lawyers and that lawyers on commissions defer to judges on commissions. There is impressionistic information that senatorial courtesy increases political controls on the merit selection process. However, very little if any serious systematic research is out there that explores the effects of the variations in merit plans. That is, I think at least, an important point. There is a lot about merit selection that we don't know.

That brings us to what Dean Douglas asked me to review: The strengths and weakness of merit selection plans. From the Texas perspective, a strong argument can be made that the strength of merit selection is also its weakness. It does represent a compromise between judicial accountability and judicial independence. Thus, there is a reduction of electoral accountability with merit selection systems. For strong believers in judicial independence, it may not be enough of a reduction, but it is a reduction. Depending on how you value judicial accountability, that reduction in accountability is either a plus for merit selection or a negative.

Beyond the more abstract theoretical perspectives on accountability vs. independence, merit selection can be discussed from four perspectives: (1) does it de-politicize the judiciary; (2) does merit selection reduce the role of campaign contributions; (3) do voters participate in retention elections and are judges defeated in retention elections; (4) does it lead to improved quality of the bench; and (5) does merit selection increase the representation of women and minorities on the bench.

III. Does it De-Politicize the Judiciary

The classic study of the politics of merit selection is a case study of the first twenty five years of operation of merit selection in Missouri by Watson and Downing, *THE POLITICS OF THE BENCH AND THE BAR* (1969). Prior to the Missouri Plan, judgeships were important political plums for the political machines that at the time played a major role in Missouri politics. For example, the Pendergast and Shannon machines fought a major battle over the election of a State Supreme Court Justice in 1936 and two years later these two machines joined to try to unseat an incumbent justice on the Court who refused to vote the Pendergast line in litigation before the court. The Pendergast and Shannon machines dominated Jackson County politics. In St. Louis, ward bosses used machine power to elect a Circuit Court judge who had never practiced law, but had been a hospital pharmacist in the years preceding his election to the bench. It was such machine politics and unfavorable stories on the Missouri judiciary that paved the way, according to Watson and Downing, for the adoption of the Missouri Plan in 1940.

The Missouri Plan did greatly weaken political machine power over the selection of judges. In that sense, one can legitimately say that the Missouri Plan did lead to de-politicizing the judiciary.

Having said that, however, Watson and Downing also show that governors tend to appoint members of their own party. Additionally, they write that commission members, with the knowledge that the person would never be appointed, often placed an opposing party member on the list of prospective nominees. Commission members would sometimes "rig" the list of prospective nominees to achieve their political or personal goals. Campaigns for lawyer members of the commissions would often reflect deep-seated tensions between plaintiff and defense bars. More recently Professor Gregory Casey has been doing follow-up research on the Missouri Plan in that state where he is looking at the operation of the plan in the years after Watson and Downing's work. He has also found that judicial selection in Missouri is a highly political process. For example, three vacancies on the Missouri Court occurred in 1982. The list of nominees for the first vacancies was said to be "fixed" by Judge Albert Rendlen, who was accused of working behind the scenes on the list of nominees with Governor Christopher Bond. Chief Justice Donnelly resigned as Chair of the nominating commission as a way of protesting Judge Rendlen's activities. However, this resignation only made Judge Rendlen the chair of the nominating commission and he then worked to insure that the next two vacancies would be filled with people who were satisfactory to himself and the Governor. In 1986, there were still other charges of political intrigue on the nominating commission for the Missouri Supreme Court. Edward "Chip" Robertson was appointed by Governor John Ashcroft to fill the only vacancy on the Court since 1982. Robertson was at the time of his selection 33 years old with no judicial experience. He was chosen over two experienced state appellate judges who were also on the list of

nominees. Robertson, however, was a close friend of Governor Ashcroft and also of Judge Rendlen, who chaired the nominating commission. Additionally, Robertson was the chief of staff for the Governor when he was appointed.

No state with the Missouri Plan or a Merit-type plan has been as intensively studied as has Missouri. That creates a problem because it is not known if the Missouri experience is typical of other Merit Plan states. To the extent that Missouri fairly represents the functioning of merit plans, however, it is clear that while the plan did dramatically reduce political machine power, it did not create a non-political judiciary.

IIIV. Does Merit Selection Reduce the Role of Campaign Contributions

The conventional wisdom is that merit selection systems do reduce the role of campaign contributions. For example, Chief Justice Norman Krivosha of the Nebraska Supreme Court has written in the Southwestern Law Journal, "Even though the merit selection system has a periodic retention vote component, the judge stands for retention without the need of spending any money in most instances."

I have no reason to doubt that statement, although there has not been empirical research on campaign contributions in merit selection states.

The major exception to Justice Krivosha's statement, and it is a very major exception, are the 1986 California Supreme Court retention elections. There, as is pointed out in research by Professor John Wold and John Culver, the death penalty issue and the law and order issue were coupled with an underlying plaintiff-defense conflict over control of the Court. The result a California retention election campaign that cost between \$8 and \$13 million (published reports on the amounts spent vary).

The California situation may well be an aberration. Indeed, Wold and Culver have written that it is an "obvious aberration", but it at least suggests the possibility that powerful interest groups can get involved in retention elections and turn them into very expensive affairs.

V. Do Voters Participate in Retention Elections; Are Judges Defeated

Professors William Hall and Larry Aspin have studied judicial retention elections from 1964-1984. They found that voters overwhelmingly vote in favor of retaining judges in merit retention elections. For the 1,864 retention elections that they studied, the mean affirmative vote for the judges was 77.2%. Interestingly, they found that in only 45 of 1,864 elections was the mean affirmative vote for a judge under 80%. There were only

22 judges who were defeated in their sample of 1,864. Ten of the 22 judges who were defeated were in Illinois which requires a 60% vote for retention and nine of those would still be on the bench if the vote required was 50% + 1. Ten of the 22 defeated judges were running in retention elections for the first time.

They also found that there is a lot of ballot roll-off in retention elections. On average, 36.2% of the voters who voted for the lead partisan office on the ballot did not vote in the retention elections on the ballot.

However, if a person did vote in one retention election, s/he would vote in all of them. There was remarkable persistence noted by Hall and Aspin in the willingness of the voters who started voting in retention elections to complete voting in all retention elections on the ballot. Hall and Aspin also found that there was little differentiation by the voters among the judges on the ballot. The average deviation by voters in favorable was only 2.41%, meaning voters treated all judges on the ballot in an election year pretty much the same. If one judge on the ballot got 75% favorable votes, it was very likely that all judges on the same ballot got about 75% of the vote.

Carbon and Berkson's study of judicial retention elections between 1972-78 identified 33 judges who were defeated in retention elections which was about 1.6% of the judges who ran in retention elections in those years. That is about the same as the defeat rate for incumbents in the U.S. House of Representatives.

In the 1985-86 election cycle, the year of the Rose Bird retention election, there was an unusually active pattern of retention election defeats. Hall and Aspin report that three California Supreme Court Justices were defeated, one county judge in Colorado, three circuit judges in Illinois and two court of common pleas judges in Pennsylvania. However, they also report, "... most judges had little to fear in terms of seeking retention by the electorate."

VI. Does Merit Selection Lead to Improved Quality on the Bench

Watson and Downing compared lawyer rankings of merit selected and Missouri Plan Judges in Missouri. Based on those rankings, they concluded that Missouri Plan Judges did eliminate the poorest quality judges. However, the elective judges got the highest rankings as well as the lowest. If lawyer rankings can be trusted, elective judges had a far greater range in quality than did Missouri Plan Judges in that the elective system produced the best ranked and the lowest ranked judges.

One problem in discussing judicial quality is trying to identify what "quality" is. Professor Henry Glick has pointed out that when commissioners in 15 commission selection jurisdictions were asked to identify those characteristics that were important in

Judicial selection, fifty two responses, often dealing with vague subjective criteria such as temperament, neutrality, and ability, were given. Professor Glick has written that these general standards or qualifications are practically unverifiable since they are nearly impossible to translate into measurable or distinguishable evaluations that can accurately screen potential nominees."

In comparing merit selected with elected judges on measurable criteria Glick found that merit selected judges did "not consistently produce obviously superior judges in terms of quality education, cosmopolitan backgrounds, previous judicial experience, or non-partisan careers."

More recently, Professors Emmert and Glick studied the characteristics of 324 state supreme court justices who were serving from 1980-81. In terms of such possible "quality" variables as localism, education, legal experience and political experience, Emmert and Glick found that "state judges have more similarities than differences". Further, those differences in the characteristics of judges were usually explained by region rather than by system of selection.

Interestingly, and in spite of much rhetoric to the contrary, the bulk of research suggests that the term "Merit selection" is a misnomer. Evidence that the more meritorious are selected under this system is sorely lacking.

VII. Does Merit Selection Increase the Numbers of Women and Minorities on the Bench

Research on this issue has produced mixed results. Let me run over a few of the findings. Dunn examined the characteristics of the commissioners in commission selection systems. He found that 97.8% of the commissioners were white. That led to the suggestion that the commissioners were not representative of society and might not be able to create a representative judiciary.

Another 1977 study of 18 black judges found that 6 served in partisan election states; 3 in nonpartisan states; 5 in merit selection states; and 4 in an appointive jurisdiction. A 1973 survey of 167 black judges showed that 37% were elected; 33% appointed; and 30% initially appointed to a vacancy and then elected. In reference to the selection of female judges, there were similar inconclusive results. In 1977, for example, of the 9 women on courts of last resort, 5 were in elective states, 1 in a Missouri Plan state, and 3 in appointive states. Of the 21 women on intermediate appellate courts, 10 were from elective states; 7 appointive jurisdictions, and 4 in Missouri Plan states.

Dubois studied judges elected on nonpartisan ballots and judges appointed to fill interim vacancies on the California Superior

Court from 1959-1977. Of the elected judges, 6.7% were female and 9.1% were nonwhite. Of the appointed judges, 2.7% were female and 3.7% were nonwhite. Dubois' conclusion was, "The differences between the two methods are obviously not large, however, and the limited access of women and ethnic minorities to the judiciary seems to be more a function of the homogeneous composition of the legal profession than the mode of judicial selection."

Emmert and Glick's study of state supreme court judges found that partisan election was more likely to favor the selection of the minorities, except in the South.

Professor Karen Tokarz examined minority and female appointments under several Missouri governors who were operating under the Missouri Plan. Governor Hearnese from 1965-68 made 70 appointments including one woman and no blacks; from 1969-72, Governor Hearnese made 82 appointments including 3 women and 2 blacks. Governor Bond made 79 appointments from 1973-76 and made six female appointments and 1 black appointment. From 1977-1980, Governor Teasdale made 61 appointments including two women and one black. From 1981-84, Governor Bond made 56 appointments including six women and two blacks. From 1985-86, Governor Ashcroft made 19 appointments which included no women and two blacks. Tokarz interprets the small number of appointments of women and black judges as being a flaw of the Missouri Plan which can and should be corrected. She cites a Missouri Bar Committee report which says that "the governor should give more consideration to the appointment of women and minorities as lay members of the commissions and as judges."

Perhaps the most widely disseminated study of this issue is the 1985 study by Henry, et al, which was done for the Fund for Modern Courts. The survey is a 50 state survey of the gender and racial composition of the bench. It attempts to correlate the percentage of women and minorities on state benches with the systems of selection in the states. The study identified 12,093 state court judges and found that 12.6% of those judges were women or minorities. There were 873 women judges, 465 black judges, and 150 Hispanic judges. There were also 77 Asian judges and 3 Native American judges. This bivariate correlational analysis concluded, "The success of women and minorities in achieving judicial office depends in large measure upon the method of selection. A higher percentage of women and minorities achieved judicial office through an appointment process, either Executive Appointment (17.9%) or Merit Selection (17.1%), than an elective Process, whether Judicial Election (11.7%), Partisan Election (11.2%), Nonpartisan Election (9.4%) or Legislative Election (6.9%)." According to Henry, et al, "... the evidence of this study is clear--women and minorities have a better chance of attaining judgeships in state courts through an appointive process, Executive Appointment or Merit Selection than through any elective process, either partisan or nonpartisan."

As it turns out, Henry, et al, oversold their conclusions. The evidence that they claimed was clear is not.

Nicholas Alozie reanalyzed Henry, et al, data. Alozie, however, was not content with the simple bivariate technique used by Henry, et al. Instead, Alozie used far more sophisticated multi-variate techniques in which he looked at the effects of systems of selection on minority and female representation on the bench as well as the effects of region, percent of minority voters in a state, and percent of minority and female lawyers in the state bars.

Alozie concluded from this multi-variate analysis, "... methods of judicial selection [absent interaction with other variables] do not account for variations in the distribution of women, black and Hispanic judges on states' judiciaries. If anything, the case for the effects of these judicial selection methods has been overstated."

However, a final point is in order before concluding this section. If an appointing officer has a strong commitment to appointing minorities and women and if that appointing officer sets up selection commissions with instructions to seek out minorities and women, there can be a significant increase in minority and female appointments. Although the Carter Plan for federal judicial appointments was not a pure merit selection plan, through executive order President Carter did set up the United States Circuit Judge Nominating Commission and he did encourage senators to set up similar commissions for district judge appointments. While the panels were criticized for being weighed with Democrats, lawyers and Carter campaign workers, Professor Elliot Slotnick found that nearly 40% of the Carter Plan nominees were nonwhite or female compared to 26% from the traditional appointment process used when senators under the Carter Administration refused to use the Carter Plan. Again, however, it should be stressed that this was a commission recommendation system where the appointing officer placed great stress on recruitment of minorities and women. Interestingly, while the Carter Plan open up the federal appointive process and while there was a greater likelihood for those selected under the Carter Plan to have graduated from out-of-state law schools, there were no other differences in the characteristics of the nominees that could be identified.

VIII. Conclusion

I hope this review of research on merit selection has proven useful. There is much more that could be said and I realize that I have just hit the high points, but there are many more presentations today. In summary, let me just emphasize that there is a significant body of research on at least some topics that affect merit selection and that are relevant to the current judicial selection debate. I will be happy to provide references

or names of academics who have worked on these issues if anyone
would like further information.

TEXAS LEGISLATIVE COUNCIL

By Gibson, A. Quellar, Turner

H B. No. 86

A BILL TO BE ENTITLED

AN ACT

relating to abolishing certain district courts and creating additional district courts and to the election of certain district court judges.

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

SECTION 1. (a) This Act is a response to federal court rulings relating to the application of the federal Voting Rights Act to certain state district judges.

(b) The legislature finds that this Act is consistent with all provisions of the Texas Constitution.

SECTION 2. Subchapter A, Chapter 24, Government Code, is amended by adding Sections 24.0015 and 24.0016 to read as follows:

Sec. 24.0015. RESIDENCY REQUIREMENT OF JUDGES. (a) A district judge must reside in the judicial district for two years before election and must maintain residency within the judicial district during the term of office.

(b) A district judge elected by place from an area that is less than the entire judicial district may, but need not be, a resident of the area from which elected.

Sec. 24.0016. ELECTION AND RETENTION OF CERTAIN JUDGES. (a) This section applies only to judges elected from places as provided by Section 24.523, 24.524, 24.525, 24.526, 24.527, 24.528, 24.529, 24.530, or 24.531.

(b) Each judge, unless otherwise removed from office, and

1 except as provided by Subsection (d), serves a four-year term of
2 office. At the end of the first and second terms following an
3 election by place, the judge is subject, in the manner provided by
4 Chapter 278, Election Code, to confirmation or rejection on a
5 nonpartisan ballot by the qualified voters of the judicial
6 district. At the end of a second term following a retention by the
7 voters of the judicial district, a vacancy exists, and a judge
8 shall be elected by place.

9 (c) If a majority of those voting on the question vote for
10 the retention of the judge, the person remains in office for a
11 regular term. If a majority do not vote for the retention, the
12 voters residing in the area represented by the place for which the
13 office is filled shall elect a judge for a regular term. The
14 special election shall be held on the third Saturday in January
15 immediately following the retention election. The judge who is not
16 retained in office is not eligible for election in that special
17 election.

18 (d) The legislature shall redistrict judicial districts
19 following each federal decennial census and shall assign judges to
20 places. The legislature shall provide for election by place for
21 the primaries and general election held in 2002. If necessary to
22 allocate courts to places, the legislature may provide for a term
23 of less than four years for any judge.

24 SECTION 3. Effective January 1, 1991, Subchapter C, Chapter
25 24, Government Code, is amended by adding Sections 24.523, 24.524,
26 24.525, 24.526, 24.527, 24.528, 24.529, 24.530, and 24.531 to read
27 as follows:

1 Sec. 24.523. 378TH JUDICIAL DISTRICT (HARRIS COUNTY). (a)

2 The 378th Judicial District is composed of Harris County.

3 (b) The district has 36 judges who are elected from state
4 representative districts as provided by Subsection (c). For
5 purposes of this section, a state representative district is
6 composed of the area in the district on January 1, 1989.

7 (c) At the special primary election and the general election
8 for state and county officers held in 1990, one judge shall be
9 elected for each of the following places:

10 (1) place 1 shall be elected by voters residing in
11 state representative district no. 125;

12 (2) place 2 shall be elected by voters residing in
13 state representative district no. 126;

14 (3) place 3 shall be elected by voters residing in
15 state representative district no. 127;

16 (4) place 4 shall be elected by voters residing in
17 state representative district no. 128;

18 (5) place 5 shall be elected by voters residing in
19 state representative district no. 129;

20 (6) place 6 shall be elected by voters residing in
21 state representative district no. 130;

22 (7) place 7 shall be elected by voters residing in
23 state representative district no. 131;

24 (8) place 8 shall be elected by voters residing in
25 state representative district no. 132;

26 (9) place 9 shall be elected by voters residing in
27 state representative district no. 133;

1 (10) place 10 shall be elected by voters residing in
2 state representative district no. 134;

3 (11) place 11 shall be elected by voters residing in
4 state representative district no. 135;

5 (12) place 12 shall be elected by voters residing in
6 state representative district no. 136;

7 (13) place 13 shall be elected by voters residing in
8 state representative district no. 137;

9 (14) place 14 shall be elected by voters residing in
10 state representative district no. 138;

11 (15) place 15 shall be elected by voters residing in
12 state representative district no. 139;

13 (16) place 16 shall be elected by voters residing in
14 state representative district no. 140;

15 (17) place 17 shall be elected by voters residing in
16 state representative district no. 141;

17 (18) place 18 shall be elected by voters residing in
18 state representative district no. 142;

19 (19) place 19 shall be elected by voters residing in
20 state representative district no. 143;

21 (20) place 20 shall be elected by voters residing in
22 state representative district no. 144;

23 (21) place 21 shall be elected by voters residing in
24 state representative district no. 145;

25 (22) place 22 shall be elected by voters residing in
26 state representative district no. 146;

27 (23) place 23 shall be elected by voters residing in

1 state representative district no. 147;

2 (24) place 24 shall be elected by voters residing in
3 state representative district no. 148;

4 (25) place 25 shall be elected by voters residing in
5 state representative district no. 149;

6 (26) place 26 shall be elected by voters residing in
7 state representative district no. 150;

8 (27) place 27 shall be elected by voters residing in
9 state representative district no. 132;

10 (28) place 28 shall be elected by voters residing in
11 state representative district no. 139;

12 (29) place 29 shall be elected by voters residing in
13 state representative district no. 147;

14 (30) place 30 shall be elected by voters residing in
15 state representative district no. 148;

16 (31) place 31 shall be elected by voters residing in
17 state representative district no. 131;

18 (32) place 32 shall be elected by voters residing in
19 state representative district no. 146;

20 (33) place 33 shall be elected by voters residing in
21 state representative district no. 143;

22 (34) place 34 shall be elected by voters residing in
23 state representative district no. 142;

24 (35) place 35 shall be elected by voters residing in
25 state representative district no. 141; and

26 (36) place 36 shall be elected by voters residing in
27 state representative district no. 138.

1 Sec. 24.524. 379TH JUDICIAL DISTRICT (DALLAS COUNTY). (a)

2 The 379th Judicial District is composed of Dallas County.

3 (b) The district has 32 judges who are elected from state
4 representative districts as provided by Subsection (c). For
5 purposes of this section, a state representative district is
6 composed of the area in the district on January 1, 1989.

7 (c) At the special primary election and the general election
8 for state and county officers held in 1990, one judge shall be
9 elected for each of the following places:

10 (1) place 1 shall be elected by voters residing in
11 state representative district no. 98;

12 (2) place 2 shall be elected by voters residing in
13 state representative district no. 99;

14 (3) place 3 shall be elected by voters residing in
15 state representative district no. 100;

16 (4) place 4 shall be elected by voters residing in
17 state representative district no. 101;

18 (5) place 5 shall be elected by voters residing in
19 state representative district no. 102;

20 (6) place 6 shall be elected by voters residing in
21 state representative district no. 103;

22 (7) place 7 shall be elected by voters residing in
23 state representative district no. 104;

24 (8) place 8 shall be elected by voters residing in
25 state representative district no. 105;

26 (9) place 9 shall be elected by voters residing in
27 state representative district no. 106;

1 (10) place 10 shall be elected by voters residing in
2 state representative district no. 107;
3 (11) place 11 shall be elected by voters residing in
4 state representative district no. 108;
5 (12) place 12 shall be elected by voters residing in
6 state representative district no. 109;
7 (13) place 13 shall be elected by voters residing in
8 state representative district no. 110;
9 (14) place 14 shall be elected by voters residing in
10 state representative district no. 111;
11 (15) place 15 shall be elected by voters residing in
12 state representative district no. 112;
13 (16) place 16 shall be elected by voters residing in
14 state representative district no. 113;
15 (17) place 17 shall be elected by voters residing in
16 state representative district no. 114;
17 (18) place 18 shall be elected by voters residing in
18 state representative district no. 100;
19 (19) place 19 shall be elected by voters residing in
20 state representative district no. 114;
21 (20) place 20 shall be elected by voters residing in
22 state representative district no. 111;
23 (21) place 21 shall be elected by voters residing in
24 state representative district no. 110;
25 (22) place 22 shall be elected by voters residing in
26 state representative district no. 102;
27 (23) place 23 shall be elected by voters residing in

1 state representative district no. 108;

2 (24) place 24 shall be elected by voters residing in
3 state representative district no. 107;

4 (25) place 25 shall be elected by voters residing in
5 state representative district no. 106;

6 (26) place 26 shall be elected by voters residing in
7 state representative district no. 105;

8 (27) place 27 shall be elected by voters residing in
9 state representative district no. 104;

10 (28) place 28 shall be elected by voters residing in
11 state representative district no. 103;

12 (29) place 29 shall be elected by voters residing in
13 state representative district no. 98;

14 (30) place 30 shall be elected by voters residing in
15 state representative district no. 99;

16 (31) place 31 shall be elected by voters residing in
17 state representative district no. 101; and

18 (32) place 32 shall be elected by voters residing in
19 state representative district no. 109.

20 Sec. 24.525. 380TH JUDICIAL DISTRICT (TARRANT COUNTY). (a)
21 The 380th Judicial District is composed of Tarrant County.

22 (b) The district has 14 judges who are elected from state
23 representative districts as provided by Subsection (c). For
24 purposes of this section, a state representative district is
25 composed of the area in the district on January 1, 1989.

26 (c) At the special primary election and the general election
27 for state and county officers held in 1990, one judge shall be

1 elected for each of the following places:

2 (1) place 1 shall be elected by voters residing in
3 state representative district no. 89;

4 (2) place 2 shall be elected by voters residing in
5 state representative district no. 90;

6 (3) place 3 shall be elected by voters residing in
7 state representative district no. 91;

8 (4) place 4 shall be elected by voters residing in
9 state representative district no. 92;

10 (5) place 5 shall be elected by voters residing in
11 state representative district no. 93;

12 (6) place 6 shall be elected by voters residing in
13 state representative district no. 94;

14 (7) place 7 shall be elected by voters residing in
15 state representative district no. 95;

16 (8) place 8 shall be elected by voters residing in
17 state representative district no. 96;

18 (9) place 9 shall be elected by voters residing in
19 state representative district no. 97;

20 (10) place 10 shall be elected by voters residing in
21 state representative district no. 90;

22 (11) place 11 shall be elected by voters residing in
23 state representative district no. 95;

24 (12) place 12 shall be elected by voters residing in
25 state representative district no. 94;

26 (13) place 13 shall be elected by voters residing in
27 state representative district no. 93; and

1 (14) place 14 shall be elected by voters residing in
2 state representative district no. 92.

3 Sec. 24.526. 381ST JUDICIAL DISTRICT (BEXAR COUNTY). (a)
4 The 381st Judicial District is composed of Bexar County.

5 (b) The district has 13 judges who are elected from state
6 representative districts as provided by Subsection (c). For
7 purposes of this section, a state representative district is
8 composed of the area in the district on January 1, 1989.

9 (c) At the special primary election and the general election
10 for state and county officers held in 1990, one judge shall be
11 elected for each of the following places:

12 (1) place 1 shall be elected by voters residing in
13 state representative district no. 115;

14 (2) place 2 shall be elected by voters residing in
15 state representative district no. 120;

16 (3) place 3 shall be elected by voters residing in
17 state representative district no. 116;

18 (4) place 4 shall be elected by voters residing in
19 state representative district no. 124;

20 (5) place 5 shall be elected by voters residing in
21 state representative district no. 123;

22 (6) place 6 shall be elected by voters residing in
23 state representative district no. 122;

24 (7) place 7 shall be elected by voters residing in
25 state representative district no. 121;

26 (8) place 8 shall be elected by voters residing in
27 state representative district no. 118;

1 (9) place 9 shall be elected by voters residing in
2 state representative district no. 119;

3 (10) place 10 shall be elected by voters residing in
4 state representative district no. 117;

5 (11) place 11 shall be elected by voters residing in
6 state representative district no. 116;

7 (12) place 12 shall be elected by voters residing in
8 state representative district no. 118; and

9 (13) place 13 shall be elected by voters residing in
10 state representative district no. 120.

11 Sec. 24.527. 382ND JUDICIAL DISTRICT (TRAVIS COUNTY). (a)
12 The 382nd Judicial District is composed of Travis County.

13 (b) The district has six judges who are elected from justice
14 precincts as provided by Subsection (c). For purposes of this
15 section, a justice precinct is composed of the area in the precinct
16 on January 1, 1989.

17 (c) At the special primary election and the general election
18 for state and county officers held in 1990, one judge shall be
19 elected for each of the following places:

20 (1) place 1 shall be elected by voters residing in
21 Justice Precinct No. 1 of Travis County;

22 (2) place 2 shall be elected by voters residing in
23 Justice Precinct No. 2 of Travis County;

24 (3) place 3 shall be elected by voters residing in
25 Justice Precinct No. 3 of Travis County;

26 (4) place 4 shall be elected by voters residing in
27 Justice Precinct No. 4 of Travis County;

1 (5) place 5 shall be elected by voters residing in
2 Justice Precinct No. 5 of Travis County; and

3 (6) place 6 shall be elected by voters residing in
4 Justice Precinct No. 4 of Travis County.

5 Sec. 24.528. 383RD JUDICIAL DISTRICT (JEFFERSON COUNTY).

6 (a) The 383rd Judicial District is composed of Jefferson County.

7 (b) The district has six judges who are elected from
8 commissioners court precincts as provided by Subsection (c). For
9 purposes of this section, a commissioners court precinct is
10 composed of the area in the precinct on January 1, 1989.

11 (c) At the special primary election and the general election
12 for state and county officers held in 1990, one judge shall be
13 elected for each of the following places:

14 (1) place 1 shall be elected by voters residing in
15 Commissioners Court Precinct No. 1 of Jefferson County;

16 (2) place 2 shall be elected by voters residing in
17 Commissioners Court Precinct No. 2 of Jefferson County;

18 (3) place 3 shall be elected by voters residing in
19 Commissioners Court Precinct No. 3 of Jefferson County;

20 (4) place 4 shall be elected by voters residing in
21 Commissioners Court Precinct No. 4 of Jefferson County;

22 (5) place 5 shall be elected by voters residing in
23 Commissioners Court Precinct No. 4 of Jefferson County; and

24 (6) place 6 shall be elected by voters residing in
25 Commissioners Court Precinct No. 3 of Jefferson County.

26 Sec. 24.529. 384TH JUDICIAL DISTRICT (LUBBOCK COUNTY). (a)

27 The 384th Judicial District is composed of Lubbock County.

1 **(b) The district has three judges who are elected from**
2 **commissioners court precincts as provided by Subsection (c). For**
3 **purposes of this section, a commissioners court precinct is**
4 **composed of the area in the precinct on January 1, 1989.**

5 **(c) At the special primary election and the general election**
6 **for state and county officers held in 1990, one judge shall be**
7 **elected for each of the following places:**

8 **(1) place 1 shall be elected by voters residing in**
9 **Commissioners Court Precinct No. 3 of Lubbock County;**

10 **(2) place 2 shall be elected by voters residing in**
11 **Commissioners Court Precinct No. 4 of Lubbock County; and**

12 **(3) place 3 shall be elected by voters residing in**
13 **Commissioners Court Precinct No. 2 of Lubbock County.**

14 **Sec. 24.530. 385TH JUDICIAL DISTRICT (ECTOR COUNTY). (a)**
15 **The 385th Judicial District is composed of Ector County.**

16 **(b) The district has three judges who are elected from**
17 **commissioners court precincts as provided by Subsection (c). For**
18 **purposes of this section, a commissioners court precinct is**
19 **composed of the area in the precinct on January 1, 1989.**

20 **(c) At the special primary election and the general election**
21 **for state and county officers held in 1990, one judge shall be**
22 **elected for each of the following places:**

23 **(1) place 1 shall be elected by voters residing in**
24 **Commissioners Court Precinct No. 2 of Ector County;**

25 **(2) place 2 shall be elected by voters residing in**
26 **Commissioners Court Precinct No. 3 of Ector County; and**

27 **(3) place 3 shall be elected by voters residing in**

1 Commissioners Court Precinct No. 4 of Ector County.

2 Sec. 24.531. 386TH JUDICIAL DISTRICT (MIDLAND COUNTY). (a)

3 The 386th Judicial District is composed of Midland County.

4 (b) The district has two judges who are elected from
5 commissioners court precincts as provided by Subsection (c). For
6 purposes of this section, a commissioners court precinct is
7 composed of the area in the precinct on January 1, 1989.

8 (c) At the special primary election and the general election
9 for state and county officers held in 1990, one judge shall be
10 elected for each of the following places:

11 (1) place 1 shall be elected by voters residing in
12 Commissioners Court Precinct No. 3 of Midland County; and

13 (2) place 2 shall be elected by voters residing in
14 Commissioners Court Precinct No. 4 of Midland County.

15 SECTION 4. Title 16, Election Code, is amended by adding
16 Chapter 278 to read as follows:

17 CHAPTER 278. RETENTION ELECTIONS FOR CERTAIN JUDICIAL OFFICES

18 Sec. 278.001. DECLARATION OF CANDIDACY. (a) Not later than
19 the date of the regular filing deadline for candidates in the
20 primary election preceding the last general election for state and
21 county officers before the expiration of the term of office, each
22 judge subject to retention by voters of a judicial district under
23 Section 24.0016(b), Government Code, who desires to continue to
24 serve in that office must file with the secretary of state a
25 declaration of candidacy to succeed himself. A declaration may not
26 be filed earlier than the 30th day before the date of the filing
27 deadline.

1 (b) A candidate for retention must pay a filing fee or file
2 a petition in lieu of a filing fee in the amount or number of
3 signatures prescribed for primary election candidates by Section
4 172.024 or 172.025.

5 (c) If no declaration of candidacy is filed for a particular
6 office, the office becomes vacant on the expiration of the current
7 term of office.

8 Sec. 278.002. RETENTION BALLOT. (a) If a declaration of
9 candidacy is filed, the name of the incumbent shall be submitted to
10 the voters separately on the general election ballot, without party
11 designation, and under the heading "Nonpartisan Judicial Retention
12 Election."

13 (b) The ballot shall be printed to allow voting for or
14 against the incumbent.

15 Sec. 278.003. GENERAL PROCEDURE FOR CONDUCT OF RETENTION
16 ELECTION. (a) Except as otherwise provided by this code, the
17 nonpartisan judicial retention election shall be conducted and the
18 results canvassed, tabulated, and reported in the manner applicable
19 to partisan offices in the general election.

20 (b) Certificates of election shall be issued to the retained
21 officers in the same manner as provided for candidates elected to
22 partisan offices.

23 Sec. 278.004. CAMPAIGN CONTRIBUTIONS AND EXPENDITURES. A
24 candidate for retention of a judicial office is subject to Title
25 15, and the candidate shall keep a record of contributions and
26 expenditures and shall file reports of contributions and
27 expenditures on the same basis as required of candidates for

1 district partisan offices.

2 Sec. 278.005. APPLICABILITY OF OTHER PARTS OF CODE. The
3 other titles of this code apply to a nonpartisan judicial retention
4 election except provisions that are inconsistent with this title or
5 that cannot feasibly be applied in a nonpartisan judicial retention
6 election.

7 Sec. 278.006. ADDITIONAL PROCEDURES. The secretary of state
8 shall prescribe any additional procedures necessary for the orderly
9 and proper administration of nonpartisan judicial retention
10 elections.

11 SECTION 5. Section 1.005(9), Election Code, is amended to
12 read as follows:

13 (9) "Independent candidate" means a candidate in a
14 nonpartisan election, other than a nonpartisan judicial retention
15 election, or a candidate in a partisan election who is not the
16 nominee of a political party.

17 SECTION 6. Section 41.002, Election Code, is amended to read
18 as follows:

19 Sec. 41.002. GENERAL ELECTION FOR STATE AND COUNTY OFFICERS.
20 The general election for state and county officers, including the
21 nonpartisan judicial retention election, shall be held on the first
22 Tuesday after the first Monday in November in even-numbered years.

23 SECTION 7. Section 52.092(d), Election Code, is amended to
24 read as follows:

25 (d) Except as otherwise provided by law, district [District]
26 offices of the state government shall be listed in the following
27 order:

- 1 (1) member, State Board of Education;
- 2 (2) state senator;
- 3 (3) state representative;
- 4 (4) chief justice, court of appeals;
- 5 (5) justice, court of appeals;
- 6 (6) district judge;
- 7 (7) criminal district judge;
- 8 (8) family district judge;
- 9 (9) district attorney;
- 10 (10) criminal district attorney.

11 SECTION 8. Section 145.003(b), Election Code, is amended to
12 read as follows:

13 (b) A candidate in the general election for state and county
14 officers, including the nonpartisan judicial retention election,
15 may be declared ineligible before the 30th day preceding election
16 day by:

17 (1) the party officer responsible for certifying the
18 candidate's name for placement on the general election ballot, in
19 the case of a candidate who is a political party's nominee; or

20 (2) the authority with whom the candidate's
21 application for a place on the ballot or declaration of candidacy
22 is required to be filed, in the case of an independent candidate or
23 a candidate in a nonpartisan judicial retention election, as
24 applicable.

25 SECTION 9. (a) Effective January 1, 1991, the following
26 sections of the Government Code are repealed:

27 (1) 24.157, 24.215, 24.256, 24.273, 24.362, 24.363,

1 24.364, 24.365, 24.368, 24.369, 24.387, 24.388, 24.406, 24.407,
2 24.409, 24.411, 24.422, 24.423, 24.424, 24.425, 24.434, 24.439,
3 24.440, 24.446, 24.447, 24.457, 24.458, 24.472, 24.616, 24.617,
4 24.618, 24.619, 24.620, 24.621, 24.622, 24.623;

5 (2) 24.146, 24.170, 24.203, 24.218, 24.236, 24.257,
6 24.259, 24.370, 24.371, 24.372, 24.373, 24.374, 24.382, 24.383,
7 24.431, 24.432, 24.433, 24.442, 24.459, 24.460, 24.468, 24.469,
8 24.475, 24.508, 24.609, 24.610, 24.611, 24.612, 24.613, 24.638,
9 24.901, 24.905;

10 (3) 24.352, 24.408, 24.410, 24.413, 24.474, 24.630,
11 24.631, 24.632, 24.633, 24.910, 24.912, 24.913;

12 (4) 24.147, 24.245, 24.249, 24.274, 24.366, 24.402,
13 24.403, 24.404, 24.405, 24.462, 24.465, 24.466, 24.467;

14 (5) 24.248, 24.380, 24.427, 24.438, 24.476, 24.477;

15 (6) 24.160, 24.359, 24.429, 24.456, 24.625, 24.920;

16 (7) 24.239, 24.414, 24.509;

17 (8) 24.172, 24.421, 24.504; and

18 (9) 24.415, 24.626.

19 (b) Effective September 1, 1990, Section 2, Chapter 632,
20 Acts of the 71st Legislature, Regular Session, 1989, and Sections
21 24.516 and 24.517, Government Code, are repealed.

22 SECTION 10. (a) The judicial offices created by this Act
23 exist for purposes of the special primary and general elections in
24 1990.

25 (b) Not later than December 15, 1990, the judge of a
26 district court abolished by this Act shall transfer all cases
27 pending in the court to another district court in the county.

1 (c) When a case is transferred from one court to another as
2 provided by Subsection (b) of this section, all processes, writs,
3 bonds, recognizances, or other obligations issued from the
4 transferring court are returnable to the court to which the case is
5 transferred as if originally issued by that court. The obligees in
6 all bonds and recognizances taken in and for a court from which a
7 case is transferred, and all witnesses summoned to appear in a
8 court from which a case is transferred, are required to appear
9 before the court to which the case is transferred as if originally
10 required to appear before the court to which the transfer is made.

11 SECTION 11. (a) This section applies only to those offices
12 abolished or created and designated by place as provided by this
13 Act.

14 (b) Nominations made by primary elections held on March 13,
15 1990, and April 10, 1990, are void. Nominations by minor political
16 parties made at conventions in 1990 on dates prescribed by Chapter
17 181 or 182, Election Code, are void. Declarations of intent filed
18 by independent candidates under Section 142.002, Election Code,
19 that were subject to the January 2, 1990, deadline, are void.

20 (c) A special general primary election shall be held on
21 August 11, 1990, and a runoff special primary election shall be
22 held, if necessary, on August 25, 1990, to make nominations for the
23 offices created and designated by place by this Act. The regular
24 filing deadline for candidates in the special general primary
25 election is 6 p.m. on the 70th day before election day.

26 (d) To the extent possible, the secretary of state shall
27 modify existing procedures, dates, and deadlines to implement this

1 Act. The secretary shall prescribe new procedures, dates, and
2 deadlines as necessary to implement this Act.

3 SECTION 12. The importance of this legislation and the
4 crowded condition of the calendars in both houses create an
5 emergency and an imperative public necessity that the
6 constitutional rule requiring bills to be read on three several
7 days in each house be suspended, and this rule is hereby suspended,
8 and that this Act take effect and be in force from and after its
9 passage, and it is so enacted.

TASK FORCE ON JUDICIAL SELECTION
April 4, 1990

Working Group I: "The Illinois Plan"
And Other Subdistrict Alternatives

The mission of Working Group I is to detail a modified version of the "Illinois Plan" and other Subdistrict Alternatives.

Modified Illinois Plan

Group I focused on the Illinois Plan because it is a compromise between two competing values regarding the role of judges in our society-that is, should judges be accountable to voters through the electoral process or should judges be removed from the electoral process and thus be independent from direct electoral pressures.

Group I agrees with Professor Anthony Champagne of the University of Texas at Dallas that it is a value judgement as to whether accountability or independence is most desirable. It is not a factual question as to whether judges should be accountable or independent; rather is is a "should" question.

With that framework in mind, one can see that the Illinois Plan draws from both the "pure" electoral process (partisan elections) and from the merit selection process (nonpartisan retention elections). The initial election will be a partisan election from a subdistrict and then at the end of the term instead of running for re-election from the subdistrict the judge will run in a non-partisan retention district-wide. This concept will accomplish two purposes:

- (a) It will allow the opportunity for members of minority classes to be elected to the district judgeships or the Court of Appeals judgeships in accordance with the Voting Rights Act.
- (b) It will provide the opportunity not to disfranchise the voters outside of the subdistrict but within the judge's jurisdiction within the district.

If the judge seeking retention receives an affirmative vote by a simple majority of the electors then the judge stays in for another term. Thereafter, the judges are subject to alternating partisan election by subdistrict and nonpartisan retention. If a judge loses the retention election then the subdistrict will be called to elect another judge in the manner as outlined above.

The above mentioned concept can apply to not only the district courts subject to the Midland case, LULAC v. Mattox (MO-88-CA-154) but also to the 13th Court of Appeals in the Brownsville case, Rangel v. Mattox (Civil Action No. (B-83-053)). This concept can further be applied to county courts-at-law (pending lawsuit in Brownsville). It is interesting to note that the Chief Justices of the Texas Courts of Appeals have recently recommended to the Task Force on Judicial Selection the similar concept-election from a subdistrict and retention from the whole district with a few differences. See attached recommendations.

"Pure" Subdistrict Plan

Under a "Pure" Subdistrict Plan, there are no retention elections. A candidate for judge would run in a subdistrict in a partisan election and then run for re-election in the same manner from the same subdistrict.

The Black and Hispanic Caucuses filed a "pure" subdistrict bill (H.B. 133) during the 3rd. Called Special Session. District Court judges would be elected from places composed of state representative districts, commissioners court precincts, or justice precincts as listed in the attached summary of H.B. 133. Proponents state it will allow the opportunity for members of minority classes to be elected to district judgeships in the said nine counties involved in the Midland case. Opponents of the "pure" Subdistrict Plan argue that it will disfranchise the voters outside of the subdistrict but within the judge's jurisdiction within in the district.

Recommendation

Group I recommends to the Task Force on Judicial Selection to adopt a modified concept of the the Illinois Plan-that is, start with a partisan election from a subdistrict and then follow it with a nonpartisan retention election. We believe that this concept will get the needed consensus from both houses of the legislature to pass a bill to address both federal cases.

Respectfully submitted,

Rep. Henry Cuellar (Coordinator)
Justice Charles Barrow
Rep. Bruce Gibson
Judge Andrew Jefferson
Rep. Sylvester Turner
Sen. Hector Uribe

THE ELECTION AND RETENTION OF JUSTICES ON THE
COURTS OF APPEALS

The Chief Justices of the 14 Courts of Appeals recommend that the necessary Constitutional Amendment and legislation be passed to provide an opportunity for members of minority classes to be elected to the Courts of Appeals in accordance with the Voting Rights Act if it be determined that such Act has application to appellate courts in this State.

We recommend the following plan which will guarantee minority representation on the Courts of Appeals and will require judicial accountability to the entire district of each Court.

1. That all vacancies be filled by appointment by the Governor from a list of 3 to 5 candidates recommended by a Select Committee made up of members from the District of the Court of Appeals for which a vacancy exist.
2. That any Justice appointed by the Governor shall at the next election stand for election from a sub-division of the Court of Appeals District in a non-partisan election, but it shall not be required that any candidate for office be a resident of the sub-division where the election occurs.
3. If a Justice does not file for re-election when his or her term of office expires, the vacancy shall be filled by a non-partisan election from a sub-division of the Court of Appeals District which corresponds with the Place assigned to that particular position on the Court, but no candidate shall be required to be a resident of the sub-division.

SUMMARY OF JUDICIAL REDRISTICTING BILL (L. EVANS)

This bill is an interim measure to comply with Judge Lucius Bunton's ruling that the current at-large system of electing state district judges in nine urban counties violates the Federal Voting Rights Act.

District Court judges will be elected from places composed of state representative districts, commissioners court precincts, or justice precincts as listed below.

In HARRIS COUNTY, 36 judges will be elected from state representative districts.

In DALLAS COUNTY, 32 judges will be elected from state representative districts.

In TARRANT COUNTY, 14 judges will be elected from state representative districts.

In BEXAR COUNTY, 13 judges will be elected from state representative districts.

In TRAVIS COUNTY, 6 judges will be elected from justice precincts.

In JEFFERSON COUNTY, 6 judges will be elected from commissioners court precincts.

In LUBBOCK COUNTY, 3 judges will be elected from commissioners court precincts.

In ECTOR COUNTY, 3 judges will be elected from commissioners court precincts.

In MIDLAND COUNTY, 2 judges will be elected from commissioners court precincts.

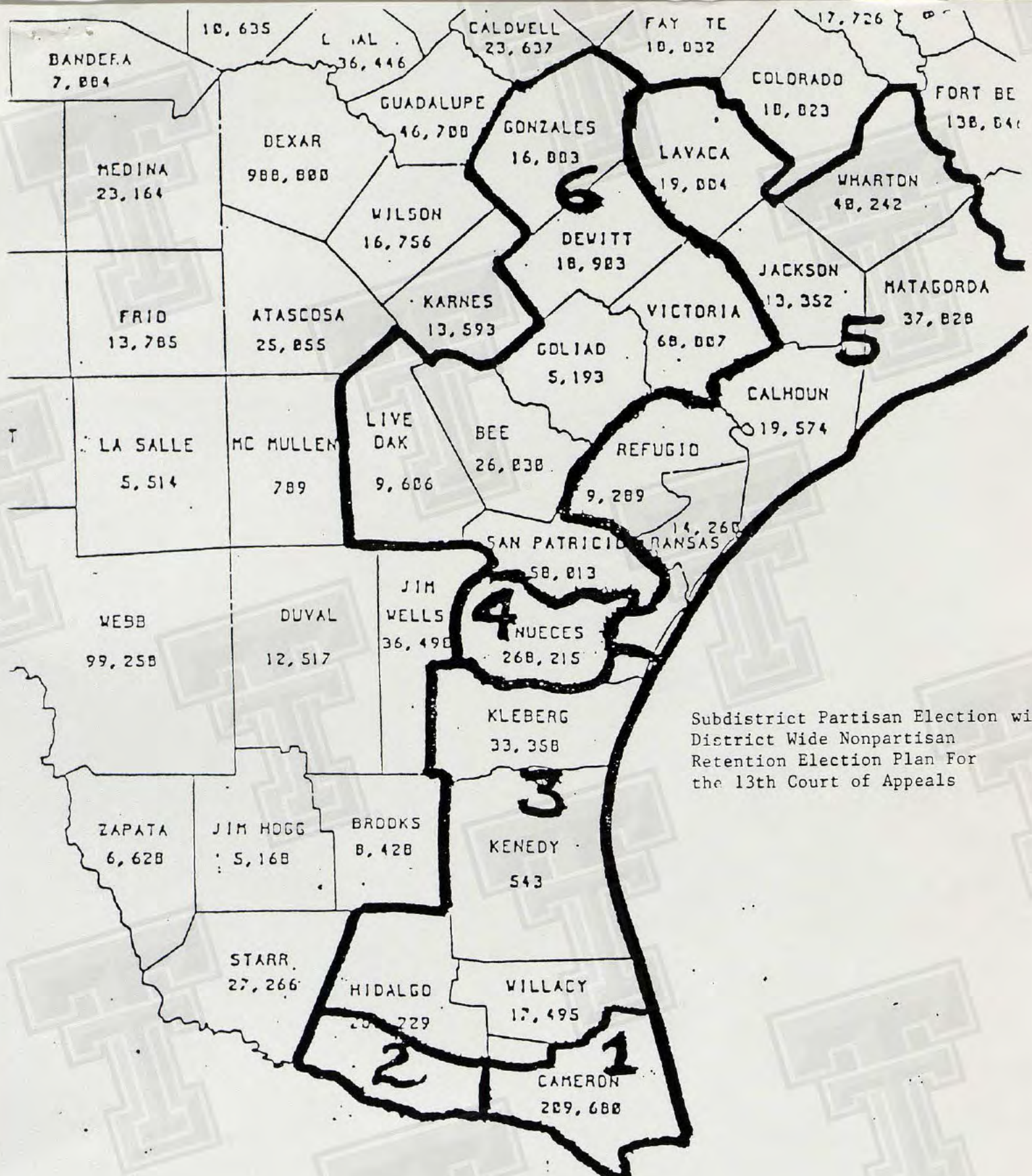
RESIDENCY REQUIREMENTS: District judge must reside in judicial district for two years before election and must maintain residency during term.

District judge need not reside in state representative district (or commissioners court precinct, or justice precinct) from which he is elected. Such a residency requirement would have to be mandated through constitutional amendment.

ELECTION DATES: Nominations made by primary elections on March 13, 1990, and April 10, 1990, are void.

Special general primary election would be held on August 11, 1990, and any runoff special primary election would be held on August 25, 1990.

Transfer of cases pending in abolished court to another district court must be completed by December 15, 1990.



Subdistrict Partisan Election with District Wide Nonpartisan Retention Election Plan For the 13th Court of Appeals

For
Sharlene
of the
League of
Women Voters.

Angel

Henry Keller

TEXAS LEGISLATIVE COUNCIL

By _____

HB. No. 87

A BILL TO BE ENTITLED

AN ACT

relating to the election of justices of the Thirteenth Court of Appeals District from single-member places.

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

SECTION 1. Section 22.214, Government Code, is amended by adding Subsections (d)-(k) to read as follows:

(d) Except as provided by Subsection (k), the Court of Appeals for the Thirteenth Court of Appeals District is composed of six justices. The justices, by majority vote, shall select one justice to serve as chief justice.

(e) The justices hold places numbered consecutively as follows:

(1) the justice holding Place 1 shall be elected by the voters in the area composed of that part of Cameron County that constitutes state representative districts numbers 38 and 39;

(2) the justice holding Place 2 shall be elected by the voters in the area composed of that part of Hidalgo County that constitutes state representative districts numbers 41 and 42;

(3) the justice holding Place 3 shall be elected by the voters in the area composed of:

(A) that part of Hidalgo County that constitutes state representative district number 40;

(B) that part of Cameron County not included in the area from which justice, Place 1, is elected;

1 (C) that part of Nueces County not included in
2 the area from which justice, Place 4, or justice, Place 5, is
3 elected;

4 (D) Willacy County;

5 (E) Kenedy County; and

6 (F) Kleberg County;

7 (4) the justice holding Place 4 shall be elected by
8 the voters in the area composed of that part of Nueces County that
9 constitutes state representative districts numbers 34 and 35;

10 (5) the justice holding Place 5 shall be elected by
11 the voters in the area composed of:

12 (A) that part of Nueces County that constitutes
13 census tracts numbered 21, 25, 26, 29, 30, 36, 37, 50, 50.99, 51,
14 and 51.99, as those tracts existed according to the 1980 federal
15 census;

16 (B) Aransas County;

17 (C) Calhoun County;

18 (D) Jackson County;

19 (E) Lavaca County;

20 (F) Matagorda County;

21 (G) Refugio County; and

22 (H) Wharton County; and

23 (6) the justice holding Place 6 shall be elected by
24 the voters in the area composed of Bee, DeWitt, Gonzales, Live Oak,
25 San Patricio, Goliad, and Victoria counties.

26 (f) For purposes of this section, a state representative
27 district is composed of the area in the district on January 1,

1 1989.

2 (g) The designation of offices and places under this section
3 identifies the offices and places for all purposes, including
4 identification on official ballots for primary and general election
5 notwithstanding Section 52.092, Election Code.

6 (h) A vacancy in the office of justice of the Thirteenth
7 Court of Appeals shall be filled by designation of office and
8 place.

9 (i) To be eligible to serve as justice, the person at the
10 time of election or appointment must reside within the boundary of
11 the place for which the office is being filled. If the justice
12 does not maintain residence within the boundary of the place for
13 which the justice is serving, a vacancy occurs.

14 (j) Each justice, unless otherwise removed from office,
15 serves a six-year term of office. At the end of the justice's
16 first term of office, the justice is subject, in the manner
17 provided by Chapter 278, Election Code, to confirmation or
18 rejection on a nonpartisan ballot by the qualified voters of the
19 court of appeals district. Thereafter, each justice is subject to
20 alternating partisan election by place and nonpartisan retention.

21 (k) At the primary and general elections in 1990, the office
22 of justice of the Court of Appeals for the Thirteenth Court of
23 Appeals District that expires December 31, 1990, shall be filled
24 from the district at large. At special primary and general
25 elections in 1990, a justice shall be elected from Place 1 and a
26 justice shall be elected from Place 5. A special general primary
27 election shall be held on May 5, 1990, and a runoff special primary

1 election shall be held, if necessary, on June 2, 1990, to make
2 nominations for the election of justices from Place 1 and Place 5.
3 The secretary of state shall modify existing procedures, dates, and
4 deadlines and prescribe new procedures, dates, and deadlines as
5 necessary to implement this subsection. The residency requirements
6 of Subsection (i) do not apply for special primary and the general
7 elections held in 1990 or to a person elected at the 1990 election
8 during the term for which that election was held. At the primary
9 and general elections in 1992, a justice shall be elected from
10 Place 2, and a justice shall be elected from Place 6. At the
11 primary and general elections in 1994, a justice shall be elected
12 from Place 3 and a justice shall be elected from Place 4. Because
13 of the election requirements of this subsection, the Court of
14 Appeals for the Thirteenth Court of Appeals District temporarily
15 may consist of more than six members. A vacancy in the office of a
16 justice elected from the court of appeals district at large may not
17 be filled unless failure to fill the vacancy would result in fewer
18 than six justices on the court.

19 SECTION 2. Section 22.216(m), Government Code, is amended to
20 read as follows:

21 (m) Except as provided by Section 22.214(k), the [The] Court
22 of Appeals for the Thirteenth Court of Appeals District consists of
23 six [a-chief-justice-and-five] justices. The justices, by majority
24 vote, shall select one justice to serve as chief justice.

25 SECTION 3. Title 16, Election Code, is amended by adding
26 Chapter 278 to read as follows:

1 CHAPTER 278. ELECTIONS FOR CERTAIN JUDICIAL OFFICES

2 SUBCHAPTER A. RETENTION ELECTIONS

3 Sec. 278.001. DECLARATION OF CANDIDACY. (a) Not later than
4 the date of the regular filing deadline for candidates in the
5 primary election preceding the last general election for state and
6 county officers before the expiration of the term of office, each
7 justice covered by Section 22.214, Government Code, who desires to
8 continue to serve in that office must file with the secretary of
9 state a declaration of candidacy to succeed himself. A declaration
10 may not be filed earlier than the 30th day before the date of the
11 filing deadline.

12 (b) A candidate for retention must pay a filing fee or file
13 a petition in lieu of a filing fee in the amount or number of
14 signatures prescribed for primary election candidates by Section
15 172.024 or 172.025.

16 (c) If no declaration of candidacy is filed for a particular
17 office, the office becomes vacant on the expiration of the current
18 term of office.

19 Sec. 278.002. RETENTION BALLOT. (a) If a declaration of
20 candidacy is filed, the name of the incumbent shall be submitted to
21 the voters separately on the general election ballot, without party
22 designation, and under the heading "Nonpartisan Judicial Retention
23 Election."

24 (b) The ballot shall be printed to allow voting for or
25 against the incumbent.

26 Sec. 278.003. GENERAL PROCEDURE FOR CONDUCT OF RETENTION
27 ELECTION. (a) Except as otherwise provided by this code, the

1 nonpartisan judicial retention election shall be conducted and the
2 results canvassed, tabulated, and reported in the manner applicable
3 to partisan offices in the general election.

4 (b) Certificates of election shall be issued to the retained
5 officers in the same manner as provided for candidates elected to
6 partisan offices.

7 Sec. 278.004. CAMPAIGN CONTRIBUTIONS AND EXPENDITURES. A
8 candidate for retention of a judicial office is subject to Title
9 15, and the candidate shall keep a record of contributions and
10 expenditures and shall file reports of contributions and
11 expenditures on the same basis as required of candidates for
12 district partisan offices.

13 Sec. 278.005. EFFECT OF ELECTION. If a majority of those
14 voting on the question vote for the retention of the justice, the
15 person remains in office for a regular term.

16 Sec. 278.006. APPLICABILITY OF OTHER PARTS OF CODE. The
17 other titles of this code apply to a nonpartisan judicial retention
18 election except provisions that are inconsistent with this
19 subchapter or that cannot feasibly be applied in a nonpartisan
20 judicial retention election.

21 Sec. 278.007. ADDITIONAL PROCEDURES. The secretary of state
22 shall prescribe any additional procedures necessary for the orderly
23 and proper administration of nonpartisan judicial retention
24 elections.

25 SUBCHAPTER B. SPECIAL PROVISIONS FOR PARTISAN ELECTIONS

26 Sec. 278.021. APPLICABILITY OF SUBCHAPTER. This subchapter
27 applies only to the partisan elections for offices covered by

1 Section 22.214, Government Code, that follow the retention
2 elections for those offices.

3 Sec. 278.022. STRAIGHT-PARTY VOTING PROHIBITED. An office
4 covered by this subchapter is not subject to provisions providing
5 for straight-party voting.

6 Sec. 278.023. BALLOT FORMAT. Offices covered by this
7 subchapter shall appear on the ballot in the same format as the
8 other offices but under the heading "Judicial Offices" after the
9 listing of the other offices.

10 Sec. 278.024. SEPARATE LISTING OF UNOPPOSED CANDIDATES. (a)
11 Any unopposed candidates shall be listed separately on the ballot
12 under the heading "Uncontested Judicial Races" following the
13 contested judicial races.

14 (b) In the general election for state and county officers,
15 the party alignment of each unopposed candidate for a judicial
16 office shall be indicated next to the candidate's name.

17 (c) Candidates listed on a voting system ballot under the
18 uncontested judicial races heading may be arranged in a manner
19 requiring voting on them as one or more groups, but only if an
20 additional ballot or ballot label would otherwise be necessary to
21 accommodate all the candidates and propositions to be listed.

22 Sec. 278.025. ADDITIONAL PROCEDURES. The secretary of state
23 shall prescribe any additional procedures or instructions necessary
24 to implement this subchapter.

25 SUBCHAPTER C. VOTER INFORMATION PAMPHLET

26 Sec. 278.031. PHOTOGRAPH AND STATEMENT FILED BY CANDIDATE.
27 Not later than the 60th day before the date of the general primary

1 election, general election for state and county officers, or
2 judicial retention election, as applicable, a candidate for an
3 office covered by Section 22.214, Government Code, may file with
4 the secretary of state a photograph of the candidate and a typed or
5 printed informational statement, on a form prescribed by the
6 secretary, to be included in the voter information pamphlet for
7 that election.

8 Sec. 278.032. PHOTOGRAPH REQUIREMENTS. (a) A candidate may
9 not submit for inclusion in the pamphlet a photograph that was
10 taken more than two years before the date of the applicable
11 election.

12 (b) The photograph must:

13 (1) be a conventional photograph with a plain
14 background; and

15 (2) be prepared and processed for printing as
16 prescribed by the secretary of state.

17 (c) The photograph may not:

18 (1) show any part of the body below the shoulders,
19 including the hands or anything held in the hands of the candidate;

20 (2) show the candidate wearing a judicial robe, a hat,
21 or a military, police, fraternal, or any other uniform; or

22 (3) show the uniform or insignia of any group or
23 organization.

24 Sec. 278.033. STATEMENT REQUIREMENTS. (a) A candidate's
25 statement must include a summary of the following information:

26 (1) current occupation;

27 (2) educational and occupational background;

1 (3) biographical information; and

2 (4) any previous experience serving in government.

3 (b) The secretary of state shall prescribe the format and
4 length of the candidate's statement.

5 Sec. 278.034. REVIEW BY SECRETARY OF STATE. (a) Not later
6 than the fifth day after the date the candidate's photograph and
7 statement are received, the secretary of state shall review those
8 materials to determine whether they comply with this subchapter.

9 (b) If the secretary of state determines that the materials
10 do not comply with the applicable requirements, the secretary shall
11 reject the materials and deliver written notice of the reason for
12 the rejection to the candidate not later than the second day after
13 the date of rejection.

14 (c) A candidate whose materials are rejected may resubmit
15 the materials subject to the prescribed deadline.

16 Sec. 278.035. PREPARATION OF PAMPHLET. (a) The secretary
17 of state shall prepare and arrange for the printing of the voter
18 information pamphlet.

19 (b) The pamphlet must include the candidates' photographs
20 and statements that comply with this subchapter, grouped according
21 to political party affiliation or as independent, write-in, or
22 retention candidates, as applicable. The order of the groups is
23 the same as the order on the ballot for the general election for
24 state and county officers. The order of the candidates' names
25 within the groups is determined by a drawing conducted by the
26 secretary of state.

27 (c) To the extent practicable, the pamphlets shall be

1 prepared so that they contain only candidates for offices on which
2 the voters receiving them will be eligible to vote.

3 (d) The secretary of state shall prescribe appropriate
4 explanatory material to be included in the pamphlet to assist the
5 voters, including a statement that the pamphlet may be used at the
6 polls to assist the voters in marking their ballots.

7 Sec. 278.036. DISTRIBUTION OF PAMPHLET. Not later than the
8 30th day before the date of each affected election, the secretary
9 of state shall mail the appropriate voter information pamphlet to
10 each household in the district in which a registered voter resides.

11 Sec. 278.037. ADDITIONAL PROCEDURES PRESCRIBED BY SECRETARY
12 OF STATE. The secretary of state shall prescribe any additional
13 procedures necessary to implement this subchapter.

14 SECTION 4. Section 1.005(9), Election Code, is amended to
15 read as follows:

16 (9) "Independent candidate" means a candidate in a
17 nonpartisan election, other than a nonpartisan judicial retention
18 election, or a candidate in a partisan election who is not the
19 nominee of a political party.

20 SECTION 5. Section 41.002, Election Code, is amended to read
21 as follows:

22 Sec. 41.002. GENERAL ELECTION FOR STATE AND COUNTY OFFICERS.
23 The general election for state and county officers, including the
24 nonpartisan judicial retention election, shall be held on the first
25 Tuesday after the first Monday in November in even-numbered years.

26 SECTION 6. Section 52.092(d), Election Code, is amended to
27 read as follows:

1 (d) Except as otherwise provided by law, district [~~District~~]
2 offices of the state government shall be listed in the following
3 order:

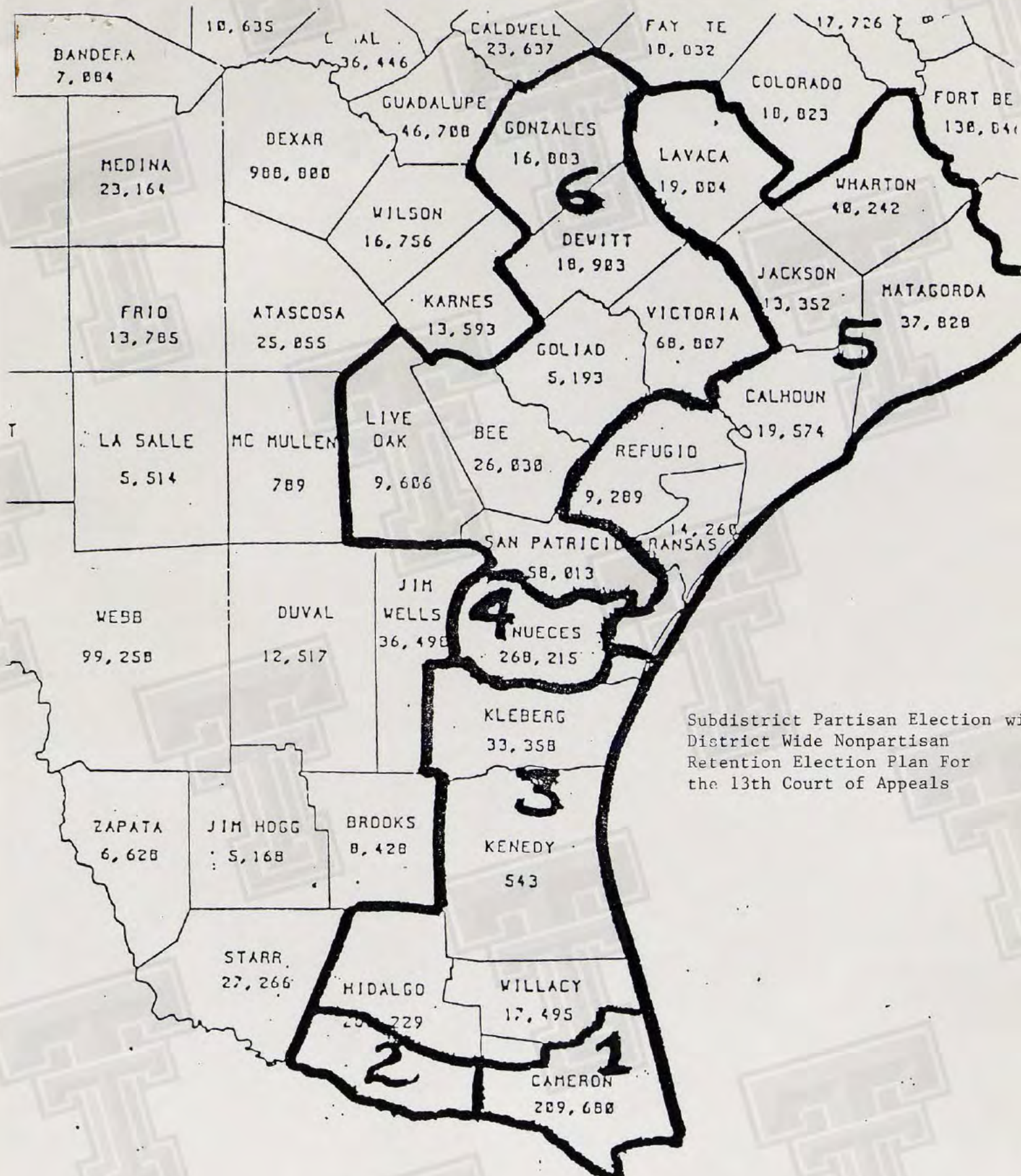
- 4 (1) member, State Board of Education;
- 5 (2) state senator;
- 6 (3) state representative;
- 7 (4) chief justice, court of appeals;
- 8 (5) justice, court of appeals;
- 9 (6) district judge;
- 10 (7) criminal district judge;
- 11 (8) family district judge;
- 12 (9) district attorney;
- 13 (10) criminal district attorney.

14 SECTION 7. Section 145.003(b), Election Code, is amended to
15 read as follows:

16 (b) A candidate in the general election for state and county
17 officers, including the nonpartisan judicial retention election,
18 may be declared ineligible before the 30th day preceding election
19 day by:

- 20 (1) the party officer responsible for certifying the
21 candidate's name for placement on the general election ballot, in
22 the case of a candidate who is a political party's nominee; or
- 23 (2) the authority with whom the candidate's
24 application for a place on the ballot or declaration of candidacy
25 is required to be filed, in the case of an independent candidate or
26 a candidate in a nonpartisan judicial retention election, as
27 applicable.

1 SECTION 8. The importance of this legislation and the
2 crowded condition of the calendars in both houses create an
3 emergency and an imperative public necessity that the
4 constitutional rule requiring bills to be read on three several
5 days in each house be suspended, and this rule is hereby suspended,
6 and that this Act take effect and be in force from and after its
7 passage, and it is so enacted.



Memo

Sally in Rep Cuellar's office
will send copies of Illinois
& New Mexico info to the
SO. I'll send it along when
I get it.

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STATE AFFAIRS COMMITTEE

Sen. John T. Montford
Chairman

Charlene

*League of Women
Voters*

Room G38D, Capitol

Phone # (512) 463-0380

BILL ANALYSIS

By: MONTFORD

S.B. 56

Relating to limited voting in certain judicial races.

BACKGROUND

In two separate decisions handed down in 1989, two different federal judges ruled that Texas' at-large method of electing certain state judges violated Section 2 of the Voting Rights Act because this method dilutes minority voting strength. In LULAC v. Mattox, Judge Lucius Bunton ruled that because the at-large method of electing the judges in state district courts in Bexar, Dallas, Ector, Harris, Jefferson, Lubbock, Midland, Tarrant and Travis Counties violated Section 2 of the Voting Rights Act, the court was bound to provide a remedy in time for the 1990 primary season. Judge Bunton ordered that the 1990 judicial elections be conducted on the basis of nonpartisan single-member subdistricts. The U.S. Court of Appeals for the Fifth Circuit has since granted a stay in this case in order to provide the legislature with a final opportunity to develop a solution.

SB 56 by Montford would correct the vote dilution problem noted by the federal courts by instituting a system of limited voting for the district courts in the nine counties covered by Judge Bunton's order. Under limited voting, the number of seats to be filled in an election exceeds the number of candidates for whom each voter may vote; in other words, the voter is limited to voting for less than a full slate. In order to correct the vote dilution problem in the district courts, each voter is permitted to vote for approximately 60% of the total number of positions to be voted on. This means that a minority of about 40% will be able to elect at least one candidate of its choice. Limited voting retains the virtue of district-wide accountability for all elected officers while removing the ability of a majority to completely exclude a significant minority from achieving representation.

SB 56 also contains a provision stating that this act will expire in the event that the U.S. Supreme Court renders a decision holding that the federal Voting Rights Act does not apply to judicial races. In that event, Texas would resume electing its judges under the current system.

PURPOSE

SB 56 by Montford is designed to correct the minority vote dilution problem created by the current at-large system of electing judges in the state district courts in nine populous counties by replacing the current system with a limited voting system.

RULEMAKING AUTHORITY

This bill confers rulemaking authority upon the Secretary of State in Section 278.005.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends Title 16 of the Election Code by adding Chapter 278 as follows:

Chapter 278
Limited Voting in Certain Judicial Races.

Sec. 278.001. States that the Chapter applies to the district courts in Bexar, Dallas, Ector, Harris, Jefferson, Lubbock, Midland, Tarrant and Travis Counties.

Sec. 278.002. States that nomination and election to the court shall be by limited voting, whereby each voter is permitted to vote for no more than about 60% of the total number of positions to be voted on. Voting for fewer than the allowed number is permitted.

Sec. 278.003. Provides for a separate judicial ballot, and provides that the ballots shall be printed in sets such that the candidates' names appear in numerous random orders, and such that incumbents are so designated. The general election ballot shall be divided into separate columns designating each political party. *

Sec. 278.004. The candidates that are nominated or elected are those, in the number to be so nominated or elected, receiving the highest number of votes.

Sec. 278.005. In any county having five or fewer district courts, all judges shall run at once, on a four-year election cycle.

Sec. 278.006. The secretary of state shall ensure that the number of seats to be filled shall be distributed as equally as possible between election cycles.

Sec. 278.007. Assignments to specialty courts in each district shall be made by the presiding judge, giving preference to incumbents. *

Sec. 278.008. Provides that the secretary of state may prescribe additional procedures necessary for the proper conduct of this Chapter.

SECTION 2. Amends Subchapter A, Chapter 24, Government Code by adding new Section 24.0015 as follows:

Sec. 24.0015. Judicial Subdistricts.

(a) The judges of the judicial districts composed entirely of those counties having a population of at least seven hundred fifty thousand shall be elected from subdistricts within the district. The legislature shall draw these subdistricts to conform to the county commissioners precinct boundaries.

(b) Judges elected from subdistricts need not reside in the subdistrict, but must reside in the district. Judges serve the entire district.

SECTION 3. States that this act expires on the date the U.S. Supreme Court renders a decision holding that the federal Voting Rights Act does not apply to judicial officers.

SECTION 4. Effective Date: January 1, 1991.

SECTION 5. Emergency Clause.

lets take 9 counties
in heg - then says
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dist. cts -
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813-54

By

Munford

S.B. 56

A BILL TO BE ENTITLED

AN ACT

relating to limited voting in certain judicial races.

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

SECTION 1. Title 16, Election Code, is amended by adding Chapter 278 to read as follows:

CHAPTER 278. LIMITED VOTING IN CERTAIN JUDICIAL RACES

Sec. 278.001. APPLICABILITY OF CHAPTER. This chapter applies to the district courts of Bexar, Dallas, Ector, Harris, Jefferson, Lubbock, Midland, Tarrant, and Travis counties.

Sec. 278.002. NOMINATION OR ELECTION BY LIMITED VOTING. (a) Nomination or election to the courts shall be by limited voting as provided by this chapter.

(b) All of the judge positions of a particular category of court that are to be voted on in an election shall be voted on as one race by all the voters of the territory from which the positions are elected. Each voter is limited to voting for a number of candidates in each race that approximates, as nearly equally as possible, 60 percent of the total number of positions to be voted on for that category of court in the territory.

(c) The secretary of state shall designate the number of candidates in each race for which each voter is entitled to vote.

(d) If a voter votes for more candidates in a race than the number to which the voter is entitled, none of the voter's votes may be counted in that race. If a voter votes for fewer

S.B. _____

1 candidates in a race than the allowed number, all of the voter's
2 votes are counted in that race.

3 Sec. 278.003. BALLOT. (a) The judicial races shall be
4 listed as a separate ballot on the primary or general election
5 ballot, as applicable, following the other offices under the
6 heading "Judicial Ballot."

7 (b) The authority responsible for having the official ballot
8 prepared shall have the ballots printed so that the candidates'
9 names in each judicial race appear in numerous random orders.
10 The secretary of state shall prescribe the procedures necessary
11 to implement this subsection.

12 (c) If the name of the incumbent in a judicial office is to
13 appear on the ballot as a candidate for that office,
14 "(Incumbent)" shall be printed beside the name on the ballot.

15 (d) The judicial ballot in each general election shall be
16 divided into such columns as the secretary of state may deem
17 appropriate, each column to be denominated with the name of such
18 political party as the secretary of state deems appropriate.
19 Candidates for each judicial race shall be listed in that column
20 corresponding to his or her party affiliation.

21 Sec. 278.004. VOTE REQUIRED FOR NOMINATION OR ELECTION. The
22 candidates that are nominated or elected in each race are those,
23 in the number to be nominated or elected, receiving the highest
24 numbers of votes.

25 Sec. 278.005. COTERMINOUS ELECTION IN CERTAIN COUNTIES. In
26 any county having five or fewer district courts, all district
27 judges in that county shall be elected coterminously.

S.B. _____

1 Sec. 278.006. STAGGERED TERMS. The secretary of state shall
2 ensure that the number of seats to be filled shall be distributed
3 as equally as possible between election cycles.

4 Sec. 278.007. SPECIALTY COURTS. Assignments to specialty
5 courts shall be made by the presiding administrative judge of
6 each region giving deference to the preferences of incumbents,
7 according to rules promulgated by the Supreme Court.

8 Sec. 278.008. ADDITIONAL PROCEDURES. The secretary of state
9 shall prescribe any additional procedures necessary for the
10 orderly and proper conduct of limited voting under this chapter.

11 SECTION 2. Subchapter A, Chapter 24, Government Code, is
12 amended by adding Section 24.0015 to read as follows:

13 Sec. 24.0015. JUDICIAL SUBDISTRICTS. (a) The judges of the
14 judicial districts composed entirely of those counties having a
15 population of at least of seven hundred fifty thousand as per the
16 most recent federal decennial census shall be elected from
17 subdistricts within the districts. The legislature shall draw
18 the boundaries of the subdistricts within each judicial district
19 to conform to the boundaries of the commissioners precincts as
20 provided by this section.

21 (b) A judge elected from a subdistrict must be a resident of
22 the judicial district but need not be a resident of the
23 subdistrict. The judge serves the entire judicial district.

24 SECTION 3. (a) This act expires on the date of a decision by
25 the U.S. Supreme Court that Section 2 of the federal Voting
26 Rights Act does not apply to the courts covered by this act.

27 (b) The attorney general shall file with the secretary of

S.B. _____

1 state a written certification of the fact that a decision under
2 (a) has been rendered.

3 SECTION 4. This Act takes effect January 1, 1991.

4 SECTION 5. The importance of this legislation and the
5 crowded condition of the calendars in both houses create an
6 emergency and an imperative public necessity that th
7 constitutional rule requiring bills to be read on three several
8 days in each house be suspended, and this rule is hereby
9 suspended.

BILL ANALYSIS

By: MONTFORD

S.B. 54

Relating to limited voting in certain judicial races.

BACKGROUND

In two separate decisions handed down in 1989, two different federal judges ruled that Texas' at-large method of electing certain state judges violated Section 2 of the Voting Rights Act because this method dilutes minority voting strength. In LULAC v. Mattox, Judge Lucius Bunton ruled that because the at-large method of electing the judges in state district courts in Bexar, Dallas, Ector, Harris, Jefferson, Lubbock, Midland, Tarrant and Travis Counties violated Section 2 of the Voting Rights Act, the court was bound to provide a remedy in time for the 1990 primary season. Judge Bunton ordered that the 1990 judicial elections be conducted on the basis of nonpartisan single-member subdistricts. The U.S. Court of Appeals for the Fifth Circuit has since granted a stay in this case in order to provide the legislature with a final opportunity to develop a solution.

SB 54 by Montford would correct any possible vote dilution problems surrounding the method of electing county court at law judges in certain counties by implementing a limited voting system in those counties covered by Judge Bunton's order in LULAC v. Mattox. This step should forestall any future judicial challenge to those elections, thereby minimizing the potential for further disruption of judicial elections by litigation.

Under limited voting, the number of seats to be filled in an election exceeds the number of candidates for whom each voter may vote; in other words, the voter is limited to voting for less than a full slate. In order to correct the vote dilution problem in the statutory county courts, each voter is permitted to vote for approximately 60% of the total number of positions to be voted on. This means that a minority of about 40% will be able to elect at least one candidate of its choice. Limited voting retains the virtue of district-wide accountability for all elected officers while removing the ability of a majority to completely exclude a significant minority from achieving representation.

SB 54 also contains a provision stating that if the U.S. Supreme Court renders a decision holding that the federal Voting Rights Act does not apply to judicial officers, this act expires. In that event, Texas would resume electing its judges under the current system.

PURPOSE

SB 54 by Montford is designed to correct the minority vote dilution problem created by the current at-large system of electing judges in the state statutory county courts in nine populous counties by replacing the current system with a limited voting system.

RULEMAKING AUTHORITY

This bill confers rulemaking authority upon the Secretary of State in Section 278.005.

SECTION--SECTION ANALYSIS

SECTION 1. Amends Title 16 of the Election Code by adding Chapter 278 as follows:

Chapter 278
Limited Voting in Certain Judicial Races.

Sec. 278.001. States that the Chapter applies to the statutory county courts in Bexar, Dallas, Ector, Harris, Jefferson, Lubbock, Midland, Tarrant and Travis Counties.

Sec. 278.002. States that nomination and election to the court shall be by limited voting, whereby each voter is permitted to vote for no more than about 60% of the total number of positions to be voted on. Voting for fewer than the allowed number is permitted.

Sec. 278.003. Provides for a separate judicial ballot, and provides that the ballots shall be printed in sets such that the candidates' names appear in numerous random orders, and such that incumbents are so designated. The judicial general election ballot shall be divided into columns in order to designate the party affiliation of each candidate.

Sec. 278.004. The candidates that are nominated or elected are those, in the number to be so nominated or elected, receiving the highest number of votes.

Sec. 278.005. In those counties having five or fewer county courts, all county court judges shall be elected at the same time, on a four-year election cycle.

Sec. 278.006. The secretary of state shall ensure that the number of seats to be filled shall be distributed as equally as possible between election cycles.

Sec. 278.007. Assignments to specialty courts shall be made by the presiding judge, giving deference to the preference of incumbents.

Sec. 278.008. Provides that the secretary of state may prescribe additional procedures necessary for the proper conduct of this Chapter.

SECTION 2. Amends Subchapter A, Chapter 24, Government Code by adding new Section 25.0014 as follows:

Sec. 25.0014. Judicial Districts.

(a) The judges of the judicial districts composed entirely of those counties having a population of at least 750,000 shall be elected from districts within the counties.

(b) The legislature shall draw the boundaries to conform to the commissioners precinct boundaries.

(c) Judges elected from districts must be residents of those counties, but not of the district; all judges serve the entire county.

SECTION 3. States that this act expires on the date the U.S. Supreme Court renders a decision holding that the federal Voting Rights Act does not apply to judicial officers.

SECTION 4. Effective Date: January 1, 1991.

SECTION 5. Emergency Clause.

County Cts at law
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separate ballot for
primary + gen elect-
specialty Cts to be
assigned by ad judge.
res. of county but not
dist

By Mustard

S.B. 54

A BILL TO BE ENTITLED

AN ACT

relating to limited voting in certain judicial races.

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

SECTION 1. Title 16, Election Code, is amended by adding Chapter 278 to read as follows:

CHAPTER 278. LIMITED VOTING IN CERTAIN JUDICIAL RACES

Sec. 278.001. APPLICABILITY OF CHAPTER. This chapter applies to the statutory county courts of Bexar, Dallas, Ector, Harris, Jefferson, Lubbock, Midland, Tarrant, and Travis counties.

Sec. 278.002. NOMINATION OR ELECTION BY LIMITED VOTING. (a) Nomination or election to the courts shall be by limited voting as provided by this chapter.

(b) All of the judge positions of a particular category of court that are to be voted on in an election shall be voted on as one race by all the voters of the territory from which the positions are elected. Each voter is limited to voting for a number of candidates in each race that approximates, as nearly equally as possible, 60 percent of the total number of positions to be voted on for that category of court in the territory.

(c) The secretary of state shall designate the number of candidates in each race for which each voter is entitled to vote.

(d) If a voter votes for more candidates in a race than the number to which the voter is entitled, none of the voter's votes

S.B. _____

1 may be counted in that race. If a voter votes for fewer
2 candidates in a race than the allowed number, all of the voter's
3 votes are counted in that race.

4 Sec. 278.003. BALLOT. (a) The judicial races shall be
5 listed as a separate ballot on the primary or general election
6 ballot, as applicable, following the other offices under the
7 heading "Judicial Ballot."

8 (b) The authority responsible for having the official ballot
9 prepared shall have the ballots printed so that the candidates'
10 names in each judicial race appear in numerous random orders.
11 The secretary of state shall prescribe the procedures necessary
12 to implement this subsection.

13 (c) If the name of the incumbent in a judicial office is to
14 appear on the ballot as a candidate for that office,
15 "(Incumbent)" shall be printed beside the name on the ballot.

16 (d) The judicial ballot in each general election shall be
17 divided into such columns as the secretary of state may deem
18 appropriate, each column to be denominated with the name of such
19 political party as the secretary of state deems appropriate.
20 Candidates for each judicial race shall be listed in that column
21 corresponding to his or her party affiliation.

22 Sec. 278.004. VOTE REQUIRED FOR NOMINATION OR ELECTION. The
23 candidates that are nominated or elected in each race are those,
24 in the number to be nominated or elected, receiving the highest
25 numbers of votes.

26 Sec. 278.005. COTERMINOUS ELECTION IN CERTAIN COUNTIES. In
27 any county having five or fewer statutory county courts, all

S.B. _____

1 statutory county court judges in that county shall be elected
2 coterminously.

3 Sec. 278.006. STAGGERED TERMS. The secretary of state shall
4 ensure that the number of seats to be filled shall be distributed
5 as equally as possible between election cycles.

6 Sec. 278.007. SPECIALTY COURTS. Assignments to specialty
7 courts shall be made by the presiding administrative judge of
8 each region giving deference to the preferences of incumbents,
9 according to rules promulgated by the Supreme Court.

10 Sec. 278.008. ADDITIONAL PROCEDURES. The secretary of state
11 shall prescribe any additional procedures necessary for the
12 orderly and proper conduct of limited voting under this chapter.

13 SECTION 2. Subchapter A, Chapter 25, Government Code, is
14 amended by adding Section 25.0014 to read as follows:

15 Sec. 25.0014. JUDICIAL DISTRICTS. (a) The judges in those
16 counties having a population of at least seven hundred fifty
17 thousand as per the most recent federal decennial census shall be
18 elected from districts within the counties.

19 (b) The legislature shall draw the boundaries of the
20 districts within each county to conform to the boundaries of the
21 commissioners precincts as provided by this section.

22 (c) A judge elected from a district must be a resident of the
23 county but need not be a resident of the district. The judge
24 serves the entire county.

25 SECTION 3. (a) This act expires on the date of a decision by
26 the U.S. Supreme Court that Section 2 of the Voting Rights Act
27 does not apply to Texas state courts.

S.B. _____

1 (b) The attorney general shall file with the secretary of
2 state a written certification of the fact that a decision under
3 (a) has been rendered.

4 SECTION 4. This Act takes effect January 1, 1991.

5 SECTION 5. The importance of this legislation and the
6 crowded condition of the calendars in both houses create an
7 emergency and an imperative public necessity that the
8 constitutional rule requiring bills to be read on three several
9 days in each house be suspended, and this rule is hereby
10 suspended.

BILL ANALYSIS

By: MONTFORD

S.B. 55

Relating to limited voting in certain judicial races.

BACKGROUND

In two separate decisions handed down in 1989, two different federal judges ruled that Texas' at-large method of electing certain state judges violated Section 2 of the Voting Rights Act because this method dilutes minority voting strength. In Rangel v. Mattox, U.S. District Judge Filemon Vela ruled that because the at-large method of electing the judges on the Thirteenth Court of Appeals violated Section 2 of the Voting Rights Act, the court was bound to provide a remedy in time for the 1990 primary season. Judge Vela ordered that the 1990 judicial elections be conducted on the basis of single-member subdistricts. The U.S. Court of Appeals for the Fifth Circuit has since granted stays in both the Rangel case and the LULAC case (having to do with election of district court judges in certain counties) in order to provide the legislature with a final opportunity to develop a solution.

SB 55 by Montford would correct the vote dilution problem noted by the federal courts by instituting a system of limited voting in the Thirteenth Court of Appeals district. Under limited voting, the number of seats to be filled in an election exceeds the number of candidates for whom each voter may vote; in other words, the voter is limited to voting for less than a full slate. In order to correct the vote dilution problem in this court of appeals district, each voter is permitted to vote for approximately 60% of the total number of positions to be voted on. This means that a minority of about 40% will be able to elect at least one candidate of its choice. Limited voting retains the virtue of district-wide accountability for all elected officers while removing the ability of a majority to completely exclude a significant minority from achieving representation.

SB 55 also contains a clause stating that if the U.S. Supreme Court holds that the federal Voting Rights Act does not apply to judicial officers, this act expires. In that event, Texas would resume electing judges according to the current system.

PURPOSE

SB 55 by Montford is designed to correct the minority vote dilution problem created by the current at-large system of electing judges in the 13th Court of Appeals by replacing the current system with a limited voting system.

RULEMAKING AUTHORITY

This bill confers rulemaking authority upon the Secretary of State in Section 278.005.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends Title 16 of the Election Code by adding Chapter 278 as follows:

Chapter 278
Limited Voting in Certain Judicial Races.

Sec. 278.001. States that the Chapter applies to the Court of Appeals for the Thirteenth Court of Appeals District.

Sec. 278.002. States that nomination and election to the court shall be by limited voting, whereby each voter is permitted to voter for no more than about 60% of the total number of positions to be voted on. Voting for fewer than the allowed number is permitted.

Sec. 278.003. Provides for a separate judicial ballot, and provides that the ballots shall be printed in sets such that the candidates' names appear in numerous random orders, and such that incumbents are so designated. Each general election ballot shall be divided into columns according to party affiliation.

Sec. 278.004. The candidates that are nominated or elected are those, in the number to be so nominated or elected, receiving the highest number of votes.

Sec. 278.005. The secretary of state shall ensure that the number of seats to be filled shall be distributed as equally as possible between election cycles.

Sec. 278.008. Provides that the secretary of state may prescribe additional procedures necessary for the proper conduct of this Chapter.

SECTION 2. States that in the event the U.S. Supreme Court renders a decision holding that the federal voting rights act does not apply to judicial officers, this act expires.

SECTION 3. Effective Date: January 1, 1991.

SECTION 4. Emergency Clause.

13th Appellate dist

Limited voting

Doesn't say anything about
which election - primary or gen

By

Murphy

S.B.

55

A BILL TO BE ENTITLED

AN ACT

relating to limited voting in certain judicial races.

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

SECTION 1. Title 16, Election Code, is amended by adding Chapter 278 to read as follows:

CHAPTER 278. LIMITED VOTING IN CERTAIN JUDICIAL RACES

Sec. 278.001. APPLICABILITY OF CHAPTER. This chapter applies to the Court of Appeals for the Thirteenth Court of Appeals District.

Sec. 278.002. NOMINATION OR ELECTION BY LIMITED VOTING. (a) Nomination or election to the court shall be by limited voting as provided by this chapter.

(b) All of the justice positions of the court that are to be voted on in an election shall be voted on as one race by all the voters of the district. Each voter is limited to voting for a number of candidates in each race that approximates, as nearly equally as possible, 60 percent of the total number of positions to be voted on.

(c) The secretary of state shall designate the number of candidates in each race for which each voter is entitled to vote.

(d) If a voter votes for more candidates in a race than the number to which the voter is entitled, none of the voter's vote may be counted in that race. If a voter votes for fewer candidates in a race than the allowed number, all of the voter's

S.B. _____

1 votes are counted in that race.

2 Sec. 278.003. BALLOT. (a) The judicial race shall be listed
3 as a separate ballot on the primary or general election ballot,
4 as applicable, following the other offices under the heading
5 "Judicial Ballot."

6 (b) The authority responsible for having the official ballot
7 prepared shall have the ballots printed so that the candidates'
8 names in the race appear in numerous random orders. The
9 secretary of state shall prescribe the procedures necessary to
10 implement this subsection.

11 (c) If the name of an incumbent on the court is to appear on
12 the ballot as a candidate for the office, "(Incumbent)" shall be
13 printed beside the name on the ballot.

14 (d) The judicial ballot in each general election shall be
15 divided into such columns as the secretary of state may deem
16 appropriate, each column to be denominated with the name of such
17 political party as the secretary of state deems appropriate.
18 Candidates for each judicial race shall be listed in that column
19 corresponding to his or her party affiliation.

20 Sec. 278.004. VOTE REQUIRED FOR NOMINATION OR ELECTION. The
21 candidates that are nominated or elected in each race are those,
22 in the number to be nominated or elected, receiving the highest
23 numbers of votes.

24 Sec. 278.005. STAGGERED TERMS. The secretary of state shall
25 ensure that the number of seats to be filled shall be distributed
26 as equally as possible between election cycles.

27 Sec. 278.008. ADDITIONAL PROCEDURES. The secretary of state

S.B. _____

1 shall prescribe any additional procedures necessary for the
2 orderly and proper conduct of limited voting under this chapter.

3 SECTION 2. (a) This act expires on the date of a decision by
4 the U.S. Supreme Court that Section 2 of the federal Voting
5 Rights Act does not apply to the courts covered by this act.

6 (b) The attorney general shall file with the secretary of
7 state a written certification of the fact that a decision under
8 (a) has been rendered.

9 SECTION 3. This Act takes effect January 1, 1991.

10 SECTION 4. The importance of this legislation and the
11 crowded condition of the calendars in both houses create an
12 emergency and an imperative public necessity that the
13 constitutional rule requiring bills to be read on three several
14 days in each house be suspended, and this rule is hereby
15 suspended.



JASON JUSTICE, JR.
EXECUTIVE ASSISTANT

SENATOR EDDIE BERNICE JOHNSON
512/463-0123

P.O. Box 12068
Austin, Texas 78711

BILL ANALYSIS

S.J.R. 9
By: Johnson

Senate Bill Analysis
3-7-90

BACKGROUND

On November 8, 1989, U.S. District Judge Lucius Bunton declared the existing at-large method of electing state district judges in Harris, Dallas, Tarrant, Bexar, Travis, Jefferson, Lubbock, Midland, and Ector Counties, to be in violation of federal law. He ordered a new election method to be adopted that does not discriminate against minorities and affords the ethnic minorities and contiguous communities a reasonable opportunity to elect judges of their choice.

PURPOSE

As proposed, S.J.R. 9 requires the submission to the voters of an amendment to the Texas Constitution authorizing the legislature to provide for the election of justices to the courts of appeals from single-member or multimember districts.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article V, Section 6, Texas Constitution, as follows:

(b) Requires justices of the courts of appeals to be elected by the voters of their districts at the general election for state and county officers, except as provided by Subsection (e) of this section. Reletters the subsection.

(c) Makes a nonsubstantive change and reletters the subsection.

(d) Reletters the subsection.

(e) Authorizes the legislature to provide for the election of the chief justice and the justices of the courts of appeals from either single-member or multimember districts. Requires a person to be a resident of the district at the time of election or appointment as a justice. Provides that a vacancy occurs if a justice does not maintain residence in the district during his term of office. Requires the districts to be as compact and contiguous as possible and to have populations as nearly equal as possible. Requires the legislature to redistrict the courts of appeals districts after the publication of each federal decennial census.

(f) Requires any vacancy in the office of chief justice or a justice to be filled by appointment by the governor, with the advice and consent of the senate.

SECTION 2. Provides a temporary provision to be added to the Texas Constitution to provide that the constitutional amendment authorizing the legislature to provide for the election of justices to the courts of appeals from single-member or multimember districts takes effect January 1, 1992. Provides that the temporary provision expires January 2, 1993.

SECTION 3. Requires the proposed constitutional amendment to be submitted to the voters at an election to be held November 6, 1990. Provides the language for the ballot.

Single newt. dist.

By Jahner E.B. Johnson

SJ.R. No. 9

A JOINT RESOLUTION

1 proposing a constitutional amendment authorizing the legislature to
2 provide for the election of justices to the courts of appeals from
3 single-member or multimember districts.

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

5 SECTION 1. Article V, Section 6, of the Texas Constitution
6 is amended to read as follows:

7 Sec. 6. (a) The state shall be divided into courts of
8 appeals districts, with each district having a Chief Justice, two
9 or more other Justices, and such other officials as may be provided
10 by law. The Justices shall have the qualifications prescribed for
11 Justices of the Supreme Court. The Court of Appeals may sit in
12 sections as authorized by law. The concurrence of a majority of
13 the judges sitting in a section is necessary to decide a case.
14 Said Court of Appeals shall have appellate jurisdiction
15 co-extensive with the limits of their respective districts, which
16 shall extend to all cases of which the District Courts or County
17 Courts have original or appellate jurisdiction, under such
18 restrictions and regulations as may be prescribed by law.
19 Provided, that the decision of said courts shall be conclusive on
20 all questions of fact brought before them on appeal or error. Said
21 courts shall have such other jurisdiction, original and appellate,
22 as may be prescribed by law.

23 Each of said Courts of Appeals shall hold its sessions at a
24 place in its district to be designated by the Legislature, and at

1 such time as may be prescribed by law.

2 (b) Except as provided by Subsection (e) of this section,
3 the [Said] Justices shall be elected by the qualified voters of
4 their respective districts at the [a] general election for state
5 and county officers.

6 (c) The Justices shall serve terms[7--for--a--term] of six
7 years and shall receive for their services the sum provided by law.
8 Each Court of Appeals shall appoint a clerk in the same manner as
9 the clerk of the Supreme Court which clerk shall receive such
10 compensation as may be fixed by law.

11 (d) All constitutional and statutory references to the
12 Courts of Civil Appeals shall be construed to mean the Courts of
13 Appeals.

14 (e) The Legislature may provide for the election of the
15 Chief Justice and Justices to any of the Courts of Appeals from
16 either single-member or multimember districts. To be eligible to
17 serve as a Justice from a court of appeals district, a person must
18 be, at the time of election or appointment, a resident of the
19 district from which the office is filled. If a Justice does not
20 maintain residence in the district during his term of office, a
21 vacancy occurs. The court of appeals districts shall be as compact
22 and contiguous as possible and shall have populations as nearly
23 equal as possible according to the population published in the most
24 recent federal decennial census. The Legislature shall redistrict
25 the court of appeals districts after the publication of each
26 federal decennial census.

27 (f) A vacancy in the office of the Chief Justice or a

1 Justice of a Court of Appeals is filled by appointment by the
2 Governor with the advice and consent of the Senate as provided by
3 Article IV, Section 12, and Article V, Section 28, of this
4 constitution.

5 SECTION 2. The following temporary provision is added to the
6 Texas Constitution:

7 TEMPORARY PROVISION. (a) The constitutional amendment
8 proposed by the 71st Legislature, 3rd Called Session, 1990,
9 authorizing the legislature to provide for the election of justices
10 to the courts of appeals from single-member or multimember
11 districts takes effect January 1, 1992.

12 (b) This temporary provision expires January 2, 1993.

13 SECTION 3. This proposed constitutional amendment shall be
14 submitted to the voters at an election to be held November 6, 1990.
15 The ballot shall be printed to provide for voting for or against
16 the proposition: "The constitutional amendment authorizing the
17 legislature to provide for the election of justices to the courts
18 of appeals from single-member or multimember districts."

BILL ANALYSIS

C.S.S.B. 2 3rd Called
By: Johnson

Senate Bill Analysis
03-07-90

BACKGROUND

On November 8, 1989, U.S. District Judge Lucius Bunton declared the existing at-large method of electing state district judges in Harris, Dallas, Tarrant, Bexar, Travis, Jefferson, Lubbock, Midland, and Ector Counties, to be in violation of federal law. He ordered a new election method to be adopted that does not discriminate against minorities and affords the ethnic minorities and contiguous communities a reasonable opportunity to elect judges of their choice.

PURPOSE

C.S.S.B. 2 provides for the abolishment of certain district courts, creates additional district courts, and provides for the election of district court judges in certain counties.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. (a) Provides that this Act is a response to the ruling by federal Judge Lucius Bunton issued on November 8, 1989 that held that the current at-large system of electing state district judges in nine Texas counties violates Section 2 of the federal Voting Rights Act. Counties affected by the ruling are Harris, Dallas, Tarrant, Bexar, Travis, Jefferson, Lubbock, Ector, and Midland.

(b) Provides that this Act is an interim plan intended to satisfy the requirements of the federal Voting Rights Act until a permanent plan can be fully considered and enacted during the 72nd legislative session. Requires, for district court elections in the listed counties in 1992 and thereafter, that judges be elected from places composed of state representative districts, commissioners court precincts, or justice precincts as assigned by the legislature consistent with the federal Voting Rights Act or by the federal courts if the legislature does not make the assignments.

(c) Provides that this Act is consistent with all provisions of the Texas Constitution.

SECTION 2. Amends Chapter 24A, Government Code, by adding Section 24.0015, as follows:

Sec. 24.0015. Sets forth residency requirements for judges.

SECTION 3. Provides that effective January 1, 1991, Chapter 24C, Government Code, is amended by adding Sections 24.523 - 24.531, as follows:

Sec. 24.523. Provides that the 378th Judicial District is composed of Harris County. Provides that the district has 36 judges elected from state representative districts. Provides that at the primary election and the general election for state and county officers held in 1990, one judge shall be elected for each of the 36 places from its corresponding state representative district. Lists places and their corresponding state representative districts.

Sec. 24.524. Provides that the 379th Judicial District is composed of Dallas County. Provides that the district has 32 judges elected from state representative districts. Provides that at the primary election and the general election for state and county officers held in 1990, one judge shall be elected for each of the 32 places from its corresponding state representative district. Lists places and their corresponding state representative districts.

Sec. 24.525. Provides that the 380th Judicial District is composed of Tarrant County. Provides that the district has 14 judges elected from state representative districts. Provides that at the primary election and the general election for state and county officers held in 1990, one judge shall be elected for each of the 14 places from its corresponding state representative district. Lists places and their corresponding state representative districts.

Sec. 24.526. Provides that the 381st Judicial District is composed of Bexar County. Provides that the district has 13 judges elected from state representative districts. Provides that at the primary election and the general election for state and county officers held in 1990, one judge shall be elected for each of the 13 places from its corresponding state representative district. Lists places and their corresponding state representative districts.

Sec. 24.527. Provides that the 382nd Judicial District is composed of Travis County. Provides that the district has 6 judges elected from justice precincts. Provides that at the primary election and the general election for state and county officers held in 1990, one judge shall be elected for each of the 6 places from its corresponding justice precinct. Lists places and their corresponding justice precincts.

Sec. 24.528. Provides that the 383rd Judicial District is composed of Jefferson County. Provides that the district has 6 judges elected from commissioners court precincts. Provides that at the primary election and the general election for state and county officers held in 1990, one judge shall be elected for each of the 6 places from its corresponding commissioners court precinct. Lists places and their corresponding commissioners court precincts.

Sec. 24.529. Provides that the 384th Judicial District is composed of Lubbock County. Provides that the district has 3 judges elected from commissioners court precincts. Provides that at the primary election and the general election for state and county officers held in 1990, one judge shall be elected for each of the 3 places from its corresponding commissioners court precinct. Lists places and their corresponding commissioners court precincts.

Sec. 24.530. Provides that the 385th Judicial District is composed of Ector County. Provides that the district has 3 judges elected from commissioners court precincts. Provides that at the primary election and the general election for state and county officers held in 1990, one judge shall be elected for each of the 3 places from its corresponding commissioners court precinct. Lists places and their corresponding commissioners court precincts.

Sec. 24.530. Provides that the 385th Judicial District is composed of Midland County. Provides that the district has 2 judges elected from commissioners court precincts. Provides that at the primary election and the general election for state and county officers held in 1990, one judge shall be elected for each of the 2 places from its corresponding commissioners court precinct. Lists places and their corresponding commissioners court precincts.

SECTION 4. Repealer. (a) Effective January 1, 1991 repeals certain enumerated sections of the Government Code.

(b) Effective September 1, 1990, repeals Section 2, Chapter 632, Acts of the 71st Legislature, Regular Session, 1989, and Sections 24.516 and 24.517, Government Code.

SECTION 5. (a) Provides that the judicial offices created by this Act exist for purposes of the primary and general elections in 1990.

(b) Provides that not later than December 15, 1990, the judge of a district court abolished by this Act is required to transfer all cases pending in the court to another district court in the county.

(c) Provides procedures and requirements for transfer of cases.

SECTION 6. (a) Provides that this section applies only to those offices abolished or created and designated by place as provided by this Act.

(b) Provides that nominations made by primary elections held on March 13, 1990, and April 10, 1990, are void. Provides that nominations by minor political parties made at conventions in 1990 on dates prescribed by Chapter 181 or 182, Election Code, are void. Provides that declarations of intent filed by independent candidates under Section 142.002, Election Code, that were subject to the January 2, 1990, deadline, are void.

(c) Requires a special general primary election to be held on August 11, 1990, and a runoff special primary election to be held, if necessary, on August 25, 1990, to make nominations for offices created and designated by place by this Act. Provides that the regular filing deadline for candidates in the special general primary election is 6 p.m. on the 70th day before election day.

(d) Requires the secretary of state to modify existing procedures, dates, and deadlines to implement this Act. Requires the secretary to prescribe new procedures, dates, and deadlines as necessary to implement this Act.

SECTION 7. Emergency Clause.
Effective date: upon passage.

By

Johnson

SJ.R. No. 2

A JOINT RESOLUTION

1 proposing a constitutional amendment requiring the legislature to
2 provide for the election of certain district judges from
3 single-member judicial divisions.

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

5 SECTION 1. Article V, Section 7, of the Texas Constitution
6 is amended to read as follows:

7 Sec. 7. (a) The State shall be divided into judicial
8 districts, with each district having one or more Judges as may be
9 provided by law or by this Constitution.

10 (b) The Legislature shall provide for the election of the
11 judges of the judicial districts composed entirely of Dallas or
12 Harris County from single-member judicial divisions in the county.
13 The number of divisions in a county is equal to the number of
14 judicial districts that are composed entirely of that county. Each
15 point in the county shall be in only one division. Each division
16 shall be contiguous and as compact as practicable. The divisions
17 in a county shall be as equal in population as practicable
18 according to the most recent federal decennial census. The
19 Legislature shall redistrict the counties into judicial divisions
20 after the publication of each federal decennial census. A judge
21 elected from a division serves the entire judicial district.

22 (c) This subsection applies only to judges elected from
23 judicial divisions. Judges elected at the first general election
24 following the initial drawing of judicial divisions or following a

1 redistricting of the county into judicial divisions serve four-year
2 terms beginning the next January 1 following the election and the
3 terms of the judges serving in the judicial districts for which the
4 judicial divisions are drawn expire on the day preceding that date.

5 (d) If an additional judicial district is created for a
6 county that the Legislature is required to divide into judicial
7 divisions, the judge for that judicial district, if elected, shall
8 be elected from the entire county until the first general election
9 following the next redistricting of that county into judicial
10 divisions.

11 (e) Each district judge shall be elected by the qualified
12 voters at a General Election and shall be a citizen of the United
13 States and of this State, who is licensed to practice law in this
14 State and has been a practicing lawyer or a Judge of a Court in
15 this State, or both combined, for four (4) years next preceding his
16 election, who has resided in the district in which he was elected
17 for two (2) years next preceding his election, and who shall reside
18 in his district during his term of office and, except as provided
19 by Subsection (c) of this Section, shall hold his office for the
20 period of four (4) years, and who shall receive for his services an
21 annual salary to be fixed by the Legislature.

22 (f) The Court shall conduct its proceedings at the county
23 seat of the county in which the case is pending, except as
24 otherwise provided by law. He shall hold the regular terms of his
25 Court at the County Seat of each County in his district in such
26 manner as may be prescribed by law. The Legislature shall have
27 power by General or Special Laws to make such provisions concerning

1 the terms or sessions of each Court as it may deem necessary.

2 (g) The Legislature shall also provide for the holding of
3 District Court when the Judge thereof is absent, or is from any
4 cause disabled or disqualified from presiding.

5 SECTION 2. Article V, Section 7a(i), of the Texas
6 Constitution is amended to read as follows:

7 (i) The legislature, the Judicial Districts Board, or the
8 Legislative Redistricting Board may not redistrict the judicial
9 districts to provide for any judicial district smaller in size than
10 an entire county except as provided by this section or by Section
11 7(b) of this article. Judicial districts smaller in size than the
12 entire county may be created subsequent to a general election where
13 a majority of the persons voting on the proposition adopt the
14 proposition "to allow the division of _____ County into
15 judicial districts composed of parts of _____ County." No
16 redistricting plan may be proposed or adopted by the legislature,
17 the Judicial Districts Board, or the Legislative Redistricting
18 Board in anticipation of a future action by the voters of any
19 county.

20 SECTION 3. The following temporary provision is added to the
21 Texas Constitution:

22 TEMPORARY PROVISION. (a) This temporary provision applies
23 to the constitutional amendment proposed by the 71st Legislature,
24 3rd Called Session, 1990, requiring the legislature to provide for
25 the election of certain district judges from single-member judicial
26 divisions.

27 (b) The constitutional amendment takes effect January 1,

1 1992.

2 (c) This temporary provision takes effect on the adoption of
3 the amendment by the voters and expires January 1, 1993.

4 SECTION 4. This proposed constitutional amendment shall be
5 submitted to the voters at an election to be held on November 6,
6 1990. The ballot shall be printed to provide for voting for or
7 against the proposition: "The constitutional amendment requiring
8 the legislature to provide for election of district judges in
9 Dallas and Harris counties from single-member judicial divisions."

By Johnson

S.B. No. 2

Substitute the following for S.B. No. 2:

By _____

C.S.S.B. No. 2

A BILL TO BE ENTITLED

AN ACT

relating to abolishing certain district courts, creating additional district courts, and the election of district court judges in certain counties.

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

SECTION 1. (a) This Act is a response to the ruling by federal Judge Lucius Bunton, issued on November 8, 1989, that held that the current at-large system of electing state district judges in nine Texas counties violates Section 2 of the federal Voting Rights Act. The counties affected by the ruling are Harris, Dallas, Tarrant, Bexar, Travis, Jefferson, Lubbock, Ector, and Midland.

(b) Because of time and data limitations, the legislature cannot completely address the issue of selection of district judges on a statewide basis before the beginning of the 1990 election cycle. This Act is an election plan intended to satisfy the requirements of the federal Voting Rights Act until a comprehensive plan can be fully considered and enacted during the 72nd legislative session. For district court elections in those counties in 1992 and thereafter, judges shall be elected from places composed of state representative districts, commissioners court precincts, or justice precincts as assigned by the legislature consistent with the federal Voting Rights Act or by the federal courts if the legislature does not make the assignments.

1 (c) The legislature finds that this Act is consistent with
2 all provisions of the Texas Constitution.

3 SECTION 2. Subchapter A, Chapter 24, Government Code, is
4 amended by adding Section 24.0015 to read as follows:

5 Sec. 24.0015. RESIDENCY REQUIREMENT OF JUDGES. (a) A
6 district judge must reside in the judicial district for two years
7 before election and must maintain residency within the judicial
8 district during the term of office.

9 (b) A district judge elected by place from an area that is
10 less than the entire judicial district may, but need not, be a
11 resident of the area from which elected.

12 SECTION 3. Effective January 1, 1991, Subchapter C, Chapter
13 24, Government Code, is amended by adding Sections 24.523, 24.524,
14 24.525, 24.526, 24.527, 24.528, 24.529, 24.530, and 24.531 to read
15 as follows:

16 Sec. 24.523. 378TH JUDICIAL DISTRICT (HARRIS COUNTY). (a)
17 The 378th Judicial District is composed of Harris County.

18 (b) The district has 36 judges who are elected from state
19 representative districts as provided by Subsection (c). For
20 purposes of this section, a state representative district is
21 composed of the area in the district on January 1, 1989.

22 (c) At the special primary election and the general election
23 for state and county officers held in 1990, one judge shall be
24 elected for each of the following places:

25 (1) place 1 shall be elected by voters residing in
26 state representative district no. 125;

27 (2) place 2 shall be elected by voters residing in

- 1 state representative district no. 126;
2 (3) place 3 shall be elected by voters residing in
3 state representative district no. 127;
4 (4) place 4 shall be elected by voters residing in
5 state representative district no. 128;
6 (5) place 5 shall be elected by voters residing in
7 state representative district no. 129;
8 (6) place 6 shall be elected by voters residing in
9 state representative district no. 130;
10 (7) place 7 shall be elected by voters residing in
11 state representative district no. 131;
12 (8) place 8 shall be elected by voters residing in
13 state representative district no. 132;
14 (9) place 9 shall be elected by voters residing in
15 state representative district no. 133;
16 (10) place 10 shall be elected by voters residing in
17 state representative district no. 134;
18 (11) place 11 shall be elected by voters residing in
19 state representative district no. 135;
20 (12) place 12 shall be elected by voters residing in
21 state representative district no. 136;
22 (13) place 13 shall be elected by voters residing in
23 state representative district no. 137;
24 (14) place 14 shall be elected by voters residing in
25 state representative district no. 138;
26 (15) place 15 shall be elected by voters residing in
27 state representative district no. 139;

1 (16) place 16 shall be elected by voters residing in
2 state representative district no. 140;

3 (17) place 17 shall be elected by voters residing in
4 state representative district no. 141;

5 (18) place 18 shall be elected by voters residing in
6 state representative district no. 142;

7 (19) place 19 shall be elected by voters residing in
8 state representative district no. 143;

9 (20) place 20 shall be elected by voters residing in
10 state representative district no. 144;

11 (21) place 21 shall be elected by voters residing in
12 state representative district no. 145;

13 (22) place 22 shall be elected by voters residing in
14 state representative district no. 146;

15 (23) place 23 shall be elected by voters residing in
16 state representative district no. 147;

17 (24) place 24 shall be elected by voters residing in
18 state representative district no. 148;

19 (25) place 25 shall be elected by voters residing in
20 state representative district no. 149;

21 (26) place 26 shall be elected by voters residing in
22 state representative district no. 150;

23 (27) place 27 shall be elected by voters residing in
24 state representative district no. 132;

25 (28) place 28 shall be elected by voters residing in
26 state representative district no. 139;

27 (29) place 29 shall be elected by voters residing in

1 state representative district no. 147;

2 (30) place 30 shall be elected by voters residing in
3 state representative district no. 148;

4 (31) place 31 shall be elected by voters residing in
5 state representative district no. 131;

6 (32) place 32 shall be elected by voters residing in
7 state representative district no. 146;

8 (33) place 33 shall be elected by voters residing in
9 state representative district no. 143;

10 (34) place 34 shall be elected by voters residing in
11 state representative district no. 142;

12 (35) place 35 shall be elected by voters residing in
13 state representative district no. 141; and

14 (36) place 36 shall be elected by voters residing in
15 state representative district no. 138.

16 Sec. 24.524. 379TH JUDICIAL DISTRICT (DALLAS COUNTY). (a)
17 The 379th Judicial District is composed of Dallas County.

18 (b) The district has 32 judges who are elected from state
19 representative districts as provided by Subsection (c). For
20 purposes of this section, a state representative district is
21 composed of the area in the district on January 1, 1989.

22 (c) At the special primary election and the general election
23 for state and county officers held in 1990, one judge shall be
24 elected for each of the following places:

25 (1) place 1 shall be elected by voters residing in
26 state representative district no. 98;

27 (2) place 2 shall be elected by voters residing in

- 1 state representative district no. 99;
- 2 (3) place 3 shall be elected by voters residing in
- 3 state representative district no. 100;
- 4 (4) place 4 shall be elected by voters residing in
- 5 state representative district no. 101;
- 6 (5) place 5 shall be elected by voters residing in
- 7 state representative district no. 102;
- 8 (6) place 6 shall be elected by voters residing in
- 9 state representative district no. 103;
- 10 (7) place 7 shall be elected by voters residing in
- 11 state representative district no. 104;
- 12 (8) place 8 shall be elected by voters residing in
- 13 state representative district no. 105;
- 14 (9) place 9 shall be elected by voters residing in
- 15 state representative district no. 106;
- 16 (10) place 10 shall be elected by voters residing in
- 17 state representative district no. 107;
- 18 (11) place 11 shall be elected by voters residing in
- 19 state representative district no. 108;
- 20 (12) place 12 shall be elected by voters residing in
- 21 state representative district no. 109;
- 22 (13) place 13 shall be elected by voters residing in
- 23 state representative district no. 110;
- 24 (14) place 14 shall be elected by voters residing in
- 25 state representative district no. 111;
- 26 (15) place 15 shall be elected by voters residing in
- 27 state representative district no. 112;

1 (16) place 16 shall be elected by voters residing in
2 state representative district no. 113;

3 (17) place 17 shall be elected by voters residing in
4 state representative district no. 114;

5 (18) place 18 shall be elected by voters residing in
6 state representative district no. 100;

7 (19) place 19 shall be elected by voters residing in
8 state representative district no. 114;

9 (20) place 20 shall be elected by voters residing in
10 state representative district no. 111;

11 (21) place 21 shall be elected by voters residing in
12 state representative district no. 110;

13 (22) place 22 shall be elected by voters residing in
14 state representative district no. 102;

15 (23) place 23 shall be elected by voters residing in
16 state representative district no. 108;

17 (24) place 24 shall be elected by voters residing in
18 state representative district no. 107;

19 (25) place 25 shall be elected by voters residing in
20 state representative district no. 106;

21 (26) place 26 shall be elected by voters residing in
22 state representative district no. 105;

23 (27) place 27 shall be elected by voters residing in
24 state representative district no. 104;

25 (28) place 28 shall be elected by voters residing in
26 state representative district no. 103;

27 (29) place 29 shall be elected by voters residing in

1 state representative district no. 98;

2 (30) place 30 shall be elected by voters residing in
3 state representative district no. 99;

4 (31) place 31 shall be elected by voters residing in
5 state representative district no. 101; and

6 (32) place 32 shall be elected by voters residing in
7 state representative district no. 109.

8 Sec. 24.525. 380TH JUDICIAL DISTRICT (TARRANT COUNTY). (a)
9 The 380th Judicial District is composed of Tarrant County.

10 (b) The district has 14 judges who are elected from state
11 representative districts as provided by Subsection (c). For
12 purposes of this section, a state representative district is
13 composed of the area in the district on January 1, 1989.

14 (c) At the special primary election and the general election
15 for state and county officers held in 1990, one judge shall be
16 elected for each of the following places:

17 (1) place 1 shall be elected by voters residing in
18 state representative district no. 89;

19 (2) place 2 shall be elected by voters residing in
20 state representative district no. 90;

21 (3) place 3 shall be elected by voters residing in
22 state representative district no. 91;

23 (4) place 4 shall be elected by voters residing in
24 state representative district no. 92;

25 (5) place 5 shall be elected by voters residing in
26 state representative district no. 93;

27 (6) place 6 shall be elected by voters residing in

1 state representative district no. 94;

2 (7) place 7 shall be elected by voters residing in
3 state representative district no. 95;

4 (8) place 8 shall be elected by voters residing in
5 state representative district no. 96;

6 (9) place 9 shall be elected by voters residing in
7 state representative district no. 97;

8 (10) place 10 shall be elected by voters residing in
9 state representative district no. 90;

10 (11) place 11 shall be elected by voters residing in
11 state representative district no. 95;

12 (12) place 12 shall be elected by voters residing in
13 state representative district no. 94;

14 (13) place 13 shall be elected by voters residing in
15 state representative district no. 93; and

16 (14) place 14 shall be elected by voters residing in
17 state representative district no. 92.

18 Sec. 24.526. 381ST JUDICIAL DISTRICT (BEXAR COUNTY). (a)
19 The 381st Judicial District is composed of Bexar County.

20 (b) The district has 13 judges who are elected from state
21 representative districts as provided by Subsection (c). For
22 purposes of this section, a state representative district is
23 composed of the area in the district on January 1, 1989.

24 (c) At the special primary election and the general election
25 for state and county officers held in 1990, one judge shall be
26 elected for each of the following places:

27 (1) place 1 shall be elected by voters residing in

1 state representative district no. 115;

2 (2) place 2 shall be elected by voters residing in
3 state representative district no. 120;

4 (3) place 3 shall be elected by voters residing in
5 state representative district no. 116;

6 (4) place 4 shall be elected by voters residing in
7 state representative district no. 124;

8 (5) place 5 shall be elected by voters residing in
9 state representative district no. 123;

10 (6) place 6 shall be elected by voters residing in
11 state representative district no. 122;

12 (7) place 7 shall be elected by voters residing in
13 state representative district no. 121;

14 (8) place 8 shall be elected by voters residing in
15 state representative district no. 118;

16 (9) place 9 shall be elected by voters residing in
17 state representative district no. 119;

18 (10) place 10 shall be elected by voters residing in
19 state representative district no. 117;

20 (11) place 11 shall be elected by voters residing in
21 state representative district no. 116;

22 (12) place 12 shall be elected by voters residing in
23 state representative district no. 118; and

24 (13) place 13 shall be elected by voters residing in
25 state representative district no. 120.

26 Sec. 24.527. 382ND JUDICIAL DISTRICT (TRAVIS COUNTY). (a)
27 The 382nd Judicial District is composed of Travis County.

1 (b) The district has six judges who are elected from justice
2 precincts as provided by Subsection (c). For purposes of this
3 section, a justice precinct is composed of the area in the precinct
4 on January 1, 1989.

5 (c) At the special primary election and the general election
6 for state and county officers held in 1990, one judge shall be
7 elected for each of the following places:

8 (1) place 1 shall be elected by voters residing in
9 Justice Precinct No. 1 of Travis County;

10 (2) place 2 shall be elected by voters residing in
11 Justice Precinct No. 2 of Travis County;

12 (3) place 3 shall be elected by voters residing in
13 Justice Precinct No. 3 of Travis County;

14 (4) place 4 shall be elected by voters residing in
15 Justice Precinct No. 4 of Travis County;

16 (5) place 5 shall be elected by voters residing in
17 Justice Precinct No. 5 of Travis County; and

18 (6) place 6 shall be elected by voters residing in
19 Justice Precinct No. 4 of Travis County.

20 Sec. 24.528. 383RD JUDICIAL DISTRICT (JEFFERSON COUNTY).

21 (a) The 383rd Judicial District is composed of Jefferson County.

22 (b) The district has six judges who are elected from
23 commissioners court precincts as provided by Subsection (c). For
24 purposes of this section, a commissioners court precinct is
25 composed of the area in the precinct on January 1, 1989.

26 (c) At the special primary election and the general election
27 for state and county officers held in 1990, one judge shall be

1 elected for each of the following places:

2 (1) place 1 shall be elected by voters residing in
3 Commissioners Court Precinct No. 1 of Jefferson County;

4 (2) place 2 shall be elected by voters residing in
5 Commissioners Court Precinct No. 2 of Jefferson County;

6 (3) place 3 shall be elected by voters residing in
7 Commissioners Court Precinct No. 3 of Jefferson County;

8 (4) place 4 shall be elected by voters residing in
9 Commissioners Court Precinct No. 4 of Jefferson County;

10 (5) place 5 shall be elected by voters residing in
11 Commissioners Court Precinct No. 4 of Jefferson County; and

12 (6) place 6 shall be elected by voters residing in
13 Commissioners Court Precinct No. 3 of Jefferson County.

14 Sec. 24.529. 384TH JUDICIAL DISTRICT (LUBBOCK COUNTY). (a)
15 The 384th Judicial District is composed of Lubbock County.

16 (b) The district has three judges who are elected from
17 commissioners court precincts as provided by Subsection (c). For
18 purposes of this section, a commissioners court precinct is
19 composed of the area in the precinct on January 1, 1989.

20 (c) At the special primary election and the general election
21 for state and county officers held in 1990, one judge shall be
22 elected for each of the following places:

23 (1) place 1 shall be elected by voters residing in
24 Commissioners Court Precinct No. 3 of Lubbock County;

25 (2) place 2 shall be elected by voters residing in
26 Commissioners Court Precinct No. 4 of Lubbock County; and

27 (3) place 3 shall be elected by voters residing in

1 Commissioners Court Precinct No. 2 of Lubbock County.

2 Sec. 24.530. 385TH JUDICIAL DISTRICT (ECTOR COUNTY). (a)

3 The 385th Judicial District is composed of Ector County.

4 (b) The district has three judges who are elected from
5 commissioners court precincts as provided by Subsection (c). For
6 purposes of this section, a commissioners court precinct is
7 composed of the area in the precinct on January 1, 1989.

8 (c) At the special primary election and the general election
9 for state and county officers held in 1990, one judge shall be
10 elected for each of the following places:

11 (1) place 1 shall be elected by voters residing in
12 Commissioners Court Precinct No. 2 of Ector County;

13 (2) place 2 shall be elected by voters residing in
14 Commissioners Court Precinct No. 3 of Ector County; and

15 (3) place 3 shall be elected by voters residing in
16 Commissioners Court Precinct No. 4 of Ector County.

17 Sec. 24.531. 386TH JUDICIAL DISTRICT (MIDLAND COUNTY). (a)
18 The 386th Judicial District is composed of Midland County.

19 (b) The district has two judges who are elected from
20 commissioners court precincts as provided by Subsection (c). For
21 purposes of this section, a commissioners court precinct is
22 composed of the area in the precinct on January 1, 1989.

23 (c) At the special primary election and the general election
24 for state and county officers held in 1990, one judge shall be
25 elected for each of the following places:

26 (1) place 1 shall be elected by voters residing in
27 Commissioners Court Precinct No. 3 of Midland County; and

1 (2) place 2 shall be elected by voters residing in
2 Commissioners Court Precinct No. 4 of Midland County.

3 SECTION 4. (a) Effective January 1, 1991, the following
4 sections of the Government Code are repealed:

5 (1) 24.157, 24.215, 24.256, 24.273, 24.362, 24.363,
6 24.364, 24.365, 24.368, 24.369, 24.387, 24.388, 24.406, 24.407,
7 24.409, 24.411, 24.422, 24.423, 24.424, 24.425, 24.434, 24.439,
8 24.440, 24.446, 24.447, 24.457, 24.458, 24.472, 24.616, 24.617,
9 24.618, 24.619, 24.620, 24.621, 24.622, 24.623;

10 (2) 24.146, 24.170, 24.203, 24.218, 24.236, 24.257,
11 24.259, 24.370, 24.371, 24.372, 24.373, 24.374, 24.382, 24.383,
12 24.431, 24.432, 24.433, 24.442, 24.459, 24.460, 24.468, 24.469,
13 24.475, 24.508, 24.609, 24.610, 24.611, 24.612, 24.613, 24.638,
14 24.901, 24.905;

15 (3) 24.352, 24.408, 24.410, 24.413, 24.474, 24.630,
16 24.631, 24.632, 24.633, 24.910, 24.912, 24.913;

17 (4) 24.147, 24.245, 24.249, 24.274, 24.366, 24.402,
18 24.403, 24.404, 24.405, 24.462, 24.465, 24.466, 24.467;

19 (5) 24.248, 24.380, 24.427, 24.438, 24.476, 24.477;

20 (6) 24.160, 24.359, 24.429, 24.456, 24.625, 24.920;

21 (7) 24.239, 24.414, 24.509;

22 (8) 24.172, 24.421, 24.504; and

23 (9) 24.415, 24.626.

24 (b) Effective September 1, 1990, Section 2, Chapter 632,
25 Acts of the 71st Legislature, Regular Session, 1989, and Sections
26 24.516 and 24.517, Government Code, are repealed.

27 SECTION 5. (a) The judicial offices created by this Act

1 exist for purposes of the special primary election and the general
2 election for state and county officers in 1990.

3 (b) Not later than December 15, 1990, the judge of a
4 district court abolished by this Act shall transfer all cases
5 pending in the court to another district court in the county.

6 (c) When a case is transferred from one court to another as
7 provided by Subsection (b) of this section, all processes, writs,
8 bonds, recognizances, or other obligations issued from the
9 transferring court are returnable to the court to which the case is
10 transferred as if originally issued by that court. The obligees in
11 all bonds and recognizances taken in and for a court from which a
12 case is transferred, and all witnesses summoned to appear in a
13 court from which a case is transferred, are required to appear
14 before the court to which the case is transferred as if originally
15 required to appear before the court to which the transfer is made.

16 SECTION 6. (a) This section applies only to those offices
17 abolished or created and designated by place as provided by this
18 Act.

19 (b) Nominations made by primary elections held on March 13,
20 1990, and April 10, 1990, are void. Nominations by minor political
21 parties made at conventions in 1990 on dates prescribed by Chapter
22 181 or 182, Election Code, are void. Declarations of intent filed
23 by independent candidates under Section 142.002, Election Code,
24 that were subject to the January 2, 1990, deadline, are void.

25 (c) A special general primary election shall be held on
26 August 11, 1990, and a runoff special primary election shall be
27 held, if necessary, on August 25, 1990, to make nominations for the

1 offices created and designated by place by this Act. The regular
2 filing deadline for candidates in the special general primary
3 election is 6 p.m. on the 70th day before election day.

4 (d) To the extent possible, the secretary of state shall
5 modify existing procedures, dates, and deadlines to implement this
6 Act. The secretary shall prescribe new procedures, dates, and
7 deadlines as necessary to implement this Act.

8 SECTION 7. The importance of this legislation and the
9 crowded condition of the calendars in both houses create an
10 emergency and an imperative public necessity that the
11 constitutional rule requiring bills to be read on three several
12 days in each house be suspended, and this rule is hereby suspended,
13 and that this Act take effect and be in force from and after its
14 passage, and it is so enacted.

residency required for

Single member districts (9) for
Supreme Ct
Ct of Crim App
9 Cts of Appeals
district cts
county cts

By

Glasgow

J.R. No. 10

A JOINT RESOLUTION

1 proposing a constitutional amendment relating to the composition of
2 certain courts and to the election of justices and judges of those
3 courts and certain other courts from single-member districts or
4 divisions.

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

6 SECTION 1. Article V, Sections 2, 4, 6, and 7, of the Texas
7 Constitution are amended to read as follows:

8 Sec. 2. (a) The Supreme Court shall consist of nine [~~the~~
9 ~~Chief--Justice--and--eight~~] Justices, any five of whom shall
10 constitute a quorum, and the concurrence of five shall be necessary
11 to a decision of a case; provided, that when the business of the
12 court may require, the court may sit in sections as designated by
13 the court to hear argument of causes and to consider applications
14 for writs of error or other preliminary matters.

15 (b) No person shall be eligible to serve in the office of
16 [~~Chief--Justice--or~~] Justice of the Supreme Court unless the person
17 is licensed to practice law in this state and is, at the time of
18 election or appointment, a citizen of the United States and a
19 resident of this state, and has attained the age of thirty-five
20 years, and has been a practicing lawyer, or a lawyer and judge of a
21 court of record together at least ten years. To be eligible to
22 serve as a Justice of the Supreme Court, a person must be, at the
23 time of election or appointment, a resident of the district from
24 which the office is filled. If a Justice does not maintain

1 residence in the district during the Justice's term of office, a
2 vacancy occurs.

3 (c) The Justices shall select, by majority vote, one of the
4 Justices to serve a two-year term as Chief Justice beginning
5 January 1 of each year following the general election for state and
6 county officers.

7 (d) The Justices shall be elected from single-member★
8 districts at the general election for state and county officers and
9 shall serve staggered six-year terms.

10 (e) The Supreme Court districts shall be contiguous and as
11 compact as practicable and shall be coterminous with the Court of
12 Criminal Appeals districts. The districts shall have populations
13 as nearly equal as possible according to the most recent federal
14 decennial census. The Legislature shall redistrict the state after
15 the publication of each federal decennial census. At the first
16 general election following the decennial redistricting, Justices
17 shall be elected from all districts, and after taking office they
18 shall draw lots so that three of them serve six-year terms, three
19 serve four-year terms, and three serve two-year terms.

20 (f) Each Justice [~~Said-Justices-shall-be-elected-(three-of~~
21 ~~them-each-two-years)-by-the-qualified-voters--of--the--state--at--a~~
22 ~~general--election;--shall--hold--their--offices-six-years;--or-until~~
23 ~~their-successors-are--elected--and--qualified;--and]~~ shall [each]
24 receive such compensation as shall be provided by law.

25 (g) In case of a vacancy in the office of a [~~the-Chief~~
26 ~~Justice-or-any]~~ Justice of the Supreme Court, the Governor shall
27 fill the vacancy with the advice and consent of the Senate as

1 provided by Article IV, Section 12, and Article V, Section 28, of
2 this Constitution until the next general election [~~for-state~~
3 ~~officers~~], and at such general election the vacancy for the
4 unexpired term shall be filled by election by the qualified voters
5 of the district [~~state~~]. [~~The-Justices-of-the-Supreme--Court--who~~
6 ~~may--be--in--office--at--the-time-this-amendment-takes-effect-shall~~
7 ~~continue-in-office-until-the-expiration-of--their--term--of--office~~
8 ~~under--the--present--Constitution,--and--until-their-successors-are~~
9 ~~elected-and-qualified.~~]

10 Sec. 4. (a) The Court of Criminal Appeals shall consist of ★
11 nine [~~eight~~] Judges [~~and-one-Presiding-Judge~~].

12 (b) The Judges shall have the same qualifications and
13 receive the same salaries as the [~~Associate~~] Justices of the
14 Supreme Court[~~,--and--the--Presiding--Judge--shall--have--the-same~~
15 ~~qualifications-and-receive-the-same-salary-as-the-Chief-Justice--of~~
16 ~~the--Supreme--Court~~]. To be eligible to serve as Judge, a person
17 must be, at the time of election or appointment, a resident of the
18 district from which the office is filled. If a Judge does not
19 maintain residence in the district during his term of office, a
20 vacancy occurs.

21 (c) The Judges shall select, by majority vote, one of the
22 Judges to serve a two-year term as Presiding Judge beginning
23 January 1 of each year following the general election for state and
24 county officers. The [~~Presiding--Judge-and-the~~] Judges shall be
25 elected from single-member districts [~~by-the--qualified--voters--of~~
26 ~~the--state~~] at the [a] general election for state and county
27 officers and shall serve staggered six-year terms [~~hold--their~~

1 ~~offices-fer-a-term-ef-six-years]~~.

2 (d) The Court of Criminal Appeals districts shall be
3 contiguous and as compact as practicable and shall be coterminous
4 with the Supreme Court districts. The districts shall have
5 populations as nearly equal as possible according to the most
6 recent federal decennial census. The Legislature shall redistrict
7 the state after the publication of each federal decennial census.
8 At the first general election following the decennial
9 redistricting, the Judges shall be elected from all districts, and
10 after taking office they shall draw lots so that three of them
11 serve six-year terms, three serve four-year terms, and three serve
12 two-year terms.

13 (e) In case of a vacancy in the office of a Judge of the
14 Court of Criminal Appeals, the Governor shall, with the advice and ★
15 consent of the Senate, fill said vacancy by appointment until the
16 next succeeding general election as provided by Article IV, Section
17 12, and Article V, Section 28, of this Constitution.

18 (f) For the purpose of hearing cases, the Court of Criminal
19 Appeals may sit in panels of three Judges, the designation thereof
20 to be under rules established by the court. In a panel of three
21 Judges, two Judges shall constitute a quorum and the concurrence of
22 two Judges shall be necessary for a decision. The Presiding Judge,
23 under rules established by the court, shall convene the court en
24 banc for the transaction of all other business and may convene the
25 court en banc for the purpose of hearing cases. The court must sit
26 en banc during proceedings involving capital punishment and other
27 cases as required by law. When convened en banc, five Judges shall

1 constitute a quorum and the concurrence of five Judges shall be
2 necessary for a decision. The Court of Criminal Appeals may
3 appoint Commissioners in aid of the Court of Criminal Appeals as
4 provided by law.

5 Sec. 6. (a) The state shall be divided into nine courts of
6 appeals districts, with each district having [~~a-Chief-Justice,~~] two
7 or more [~~ether~~] Justices, and such other officials as may be
8 provided by law. The Court of Appeals districts shall be
9 coterminous with the Supreme Court and Court of Criminal Appeals
10 districts. The Justices shall have the qualifications prescribed
11 for Justices of the Supreme Court. The Justices of each Court of
12 Appeals shall select, by majority vote, one of the Justices to
13 serve a two-year term as Chief Justice of that Court of Appeals
14 beginning January 1 of each year following the general election for
15 state and county officers. The Court of Appeals may sit in
16 sections as authorized by law. The concurrence of a majority of
17 the judges sitting in a section is necessary to decide a case.
18 Said Court of Appeals shall have appellate jurisdiction
19 co-extensive with the limits of their respective districts, which
20 shall extend to all cases of which the District Courts or County
21 Courts have original or appellate jurisdiction, under such
22 restrictions and regulations as may be prescribed by law.
23 Provided, that the decision of said courts shall be conclusive on
24 all questions of fact brought before them on appeal or error. Said
25 courts shall have such other jurisdiction, original and appellate,
26 as may be prescribed by law.

27 Each of said Courts of Appeals shall hold its sessions at a

1 place in its district to be designated by the Legislature, and at
2 such time as may be prescribed by law.

3 (b) Said Justices shall be elected from single-member
4 divisions of Court of Appeals [~~by the qualified veterans of their~~
5 ~~respective~~] districts at the [a] general election for state and
6 county officers. To be eligible to serve as a Justice from a court
7 of appeals district, a person must be, at the time of election or
8 appointment, a resident of the division from which the office is
9 filled. If a Justice does not maintain residence in the division
10 during his term of office, a vacancy occurs. The court of appeals
11 divisions shall be contiguous and as compact as practicable. The
12 divisions shall have populations as nearly equal as possible
13 according to the most recent federal decennial census. The
14 Legislature shall redistrict the state into Court of Appeals
15 districts and the districts into divisions after the publication of
16 each federal decennial census. At the first general election
17 following the initial drawing of divisions or following a
18 redistricting into divisions, the Justices shall be elected from
19 all divisions and shall serve six-year terms beginning the next
20 January 1 following the election. The terms of the Justices in
21 office expire on the day preceding that date.

22 (c) The Justices shall serve terms[~~7--for-a-term~~] of six
23 years and shall receive for their services the sum provided by law.
24 Each Court of Appeals shall appoint a clerk in the same manner as
25 the clerk of the Supreme Court which clerk shall receive such
26 compensation as may be fixed by law.

27 (d) All constitutional and statutory references to the

1 Courts of Civil Appeals shall be construed to mean the Courts of
2 Appeals.

3 (e) A vacancy in the office of a Justice of a Court of
4 Appeals is filled by appointment by the Governor with the advice
5 and consent of the Senate as provided by Article IV, Section 12,
6 and Article V, Section 28, of this constitution.

7 Sec. 7. (a) The State shall be divided into judicial
8 districts, with each district having one or more Judges as may be
9 provided by law or by this Constitution.

10 (b) The Legislature shall provide for the election of the
11 judges of the judicial districts composed entirely of one county
12 from single-member judicial divisions in the county. The number of
13 divisions in a county is equal to the number of judicial districts
14 that are composed entirely of that county. Each point in the
15 county shall be in only one division. Each division shall be
16 contiguous and as compact as practicable. The divisions shall have
17 populations as nearly equal as possible according to the most
18 recent federal decennial census. The Legislature shall redistrict
19 the counties into judicial divisions after the publication of each
20 federal decennial census. A judge elected from a division serves
21 the entire judicial district.

22 (c) This subsection applies only to judges elected from
23 judicial divisions. At the first general election following the
24 initial drawing of judicial divisions or following a redistricting
25 of the county into judicial divisions, judges shall be elected from
26 all divisions and shall serve four-year terms beginning the next
27 January 1 following the election. The terms of the judges serving

1 in the judicial districts for which the judicial divisions are
2 drawn expire on the day preceding that date.

3 (d) If an additional judicial district is created for a
4 county that the Legislature is required to divide into judicial
5 divisions, the judge for that judicial district, if elected, shall
6 be elected from the entire county until the first general election
7 following the next redistricting of that county into judicial
8 divisions. *"judicial division" of a judicial district*

9 (e) Each district judge shall be elected by the qualified
10 voters at a General Election and shall be a citizen of the United
11 States and of this State, who is licensed to practice law in this
12 State and has been a practicing lawyer or a Judge of a Court in
13 this State, or both combined, for four (4) years next preceding his
14 election, who has resided in the (district) in which he was elected
15 for two (2) years next preceding his election, and who shall reside
16 in his district during his term of office and, except as provided
17 by Subsection (c) of this section, shall hold his office for the
18 period of four (4) years, and who shall receive for his services an
19 annual salary to be fixed by the Legislature.

20 (f) The Court shall conduct its proceedings at the county
21 seat of the county in which the case is pending, except as
22 otherwise provided by law. He shall hold the regular terms of his
23 Court at the County Seat of each County in his district in such
24 manner as may be prescribed by law. The Legislature shall have
25 power by General or Special Laws to make such provisions concerning
26 the terms or sessions of each Court as it may deem necessary.

27 (g) The Legislature shall also provide for the holding of

1 District Court when the Judge thereof is absent, or is from any
2 cause disabled or disqualified from presiding.

3 SECTION 2. Article V, Section 7a(i), of the Texas
4 Constitution is amended to read as follows:

5 (i) The legislature, the Judicial Districts Board, or the
6 Legislative Redistricting Board may not redistrict the judicial
7 districts to provide for any judicial district smaller in size than
8 an entire county except as provided by this section or by Section
9 7(b) of this article. Judicial districts smaller in size than the
10 entire county may be created subsequent to a general election where
11 a majority of the persons voting on the proposition adopt the
12 proposition "to allow the division of _____ County into
13 judicial districts composed of parts of _____ County." No
14 redistricting plan may be proposed or adopted by the legislature,
15 the Judicial Districts Board, or the Legislative Redistricting
16 Board in anticipation of a future action by the voters of any
17 county.

18 SECTION 3. Article V, Section 30, of the Texas Constitution
19 is amended to read as follows:

20 Sec. 30. (a) The Judges of all Courts of county-wide
21 jurisdiction heretofore or hereafter created by the Legislature of
22 this State, and all Criminal District Attorneys now or hereafter
23 authorized by the laws of this State, shall be elected for a term
24 of four years, and shall serve until their successors have
25 qualified.

26 (b) The Legislature shall provide for the election of the
27 Judges of the statutory county courts of each county from

1 single-member judicial districts in the county. Each point in the
2 county shall be in only one district. Each district shall be
3 contiguous and as compact as practicable. The districts shall
4 have populations as nearly equal as possible according to the most
5 recent federal decennial census. The Legislature shall redistrict
6 the counties into judicial districts after the publication of each
7 federal decennial census. A Judge elected from a district serves
8 the entire county.

9 (c) At the first general election following the initial
10 drawing of judicial districts or following a redistricting of the
11 county into judicial districts, the Judges shall be elected from
12 all districts and shall serve four-year terms beginning the next
13 January 1 following the election. The terms of the Judges serving
14 in the judicial districts expire on the day preceding that date.

15 (d) If an additional statutory county court is created for a
16 county, the Judge for that statutory county court, if elected,
17 shall be elected from the entire county until the first general
18 election following the next redistricting of that county into
19 judicial districts.

20 SECTION 4. The following temporary provision is added to the
21 Texas Constitution:

22 TEMPORARY PROVISION. (a) This temporary provision applies
23 to the constitutional amendment proposed by the 71st Legislature,
24 3rd Called Session, 1990, relating to the composition of certain
25 courts and to the election of justices and judges of those courts
26 and certain other courts from single-member districts or divisions.

27 (b) The constitutional amendment takes effect January 1,

1 1992. However, the legislature shall draw the appropriate
2 districts before that date to implement the amendment.

3 (c) The terms of the eight justices and the chief justice of
4 the supreme court, the eight judges and the presiding judge of the
5 court of criminal appeals, and the justices and chief justices of
6 the courts of appeals who are serving December 31, 1992, expire
7 January 1, 1993, regardless of the length of term being served.
8 The holding of one of those offices does not disqualify a justice
9 or judge from being a candidate for nomination or for election to
10 the office of justice of the supreme court, judge of the court of
11 criminal appeals, or justice of a court of appeals from the
12 district or division in which the judge or justice resides. The
13 nine justices of the supreme court and the nine judges of the court
14 of criminal appeals elected for terms beginning January 1, 1993,
15 shall draw lots to comply with the staggered-term system prescribed
16 by the amendment.

17 (d) This temporary provision expires January 2, 1993.

18 SECTION 5. This proposed constitutional amendment shall be
19 submitted to the voters at an election to be held November 6, 1990.
20 The ballot shall be printed to provide for voting for or against
21 the proposition: "The constitutional amendment relating to the
22 composition of the supreme court, the court of criminal appeals,
23 and the courts of appeals and to the election of justices and
24 judges of those courts, statutory county courts, and certain
25 district courts from single-member districts or divisions."

temporary until 1992
residency in jud. dist.
(not sub dist?)

By



EVANS

H. B. No. 133

A BILL TO BE ENTITLED

AN ACT

relating to abolishing certain district courts, creating additional district courts, and the election of district court judges in certain counties.

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

SECTION 1. (a) This Act is a response to the ruling by federal Judge Lucius Bunton, issued on November 8, 1989, that held that the current at-large system of electing state district judges in nine Texas counties violates Section 2 of the federal Voting Rights Act. The counties affected by the ruling are Harris, Dallas, Tarrant, Bexar, Travis, Jefferson, Lubbock, Ector, and Midland.

(b) Because of time and data limitations, the legislature cannot completely address the issue of selection of district judges on a statewide basis before the beginning of the 1990 election cycle. This Act is an election plan intended to satisfy the requirements of the federal Voting Rights Act until a comprehensive plan can be fully considered and enacted during the 72nd legislative session. For district court elections in those counties in 1992 and thereafter, judges shall be elected from places composed of state representative districts, commissioners court precincts, or justice precincts as assigned by the legislature consistent with the federal Voting Rights Act or by the federal courts if the legislature does not make the assignments.

1 (c) The legislature finds that this Act is consistent with
2 all provisions of the Texas Constitution.

3 SECTION 2. Subchapter A, Chapter 24, Government Code, is
4 amended by adding Section 24.0015 to read as follows:

5 Sec. 24.0015. RESIDENCY REQUIREMENT OF JUDGES. (a) A
6 district judge must reside in the judicial district for two years
7 before election and must maintain residency within the judicial ★
8 district during the term of office.

9 (b) A district judge elected by place from an area that is
10 less than the entire judicial district may, but need not, be a
11 resident of the area from which elected.

12 SECTION 3. Effective January 1, 1991, Subchapter C, Chapter
13 24, Government Code, is amended by adding Sections 24.523, 24.524,
14 24.525, 24.526, 24.527, 24.528, 24.529, 24.530, and 24.531 to read
15 as follows:

16 Sec. 24.523. 378TH JUDICIAL DISTRICT (HARRIS COUNTY). (a)
17 The 378th Judicial District is composed of Harris County.

18 (b) The district has 36 judges who are elected from state
19 representative districts as provided by Subsection (c). For
20 purposes of this section, a state representative district is
21 composed of the area in the district on January 1, 1989.

22 (c) At the special primary election and the general election
23 for state and county officers held in 1990, one judge shall be
24 elected for each of the following places:

25 (1) place 1 shall be elected by voters residing in
26 state representative district no. 125;

27 (2) place 2 shall be elected by voters residing in

1 state representative district no. 126;
2 (3) place 3 shall be elected by voters residing in
3 state representative district no. 127;
4 (4) place 4 shall be elected by voters residing in
5 state representative district no. 128;
6 (5) place 5 shall be elected by voters residing in
7 state representative district no. 129;
8 (6) place 6 shall be elected by voters residing in
9 state representative district no. 130;
10 (7) place 7 shall be elected by voters residing in
11 state representative district no. 131;
12 (8) place 8 shall be elected by voters residing in
13 state representative district no. 132;
14 (9) place 9 shall be elected by voters residing in
15 state representative district no. 133;
16 (10) place 10 shall be elected by voters residing in
17 state representative district no. 134;
18 (11) place 11 shall be elected by voters residing in
19 state representative district no. 135;
20 (12) place 12 shall be elected by voters residing in
21 state representative district no. 136;
22 (13) place 13 shall be elected by voters residing in
23 state representative district no. 137;
24 (14) place 14 shall be elected by voters residing in
25 state representative district no. 138;
26 (15) place 15 shall be elected by voters residing in
27 state representative district no. 139;

1 (16) place 16 shall be elected by voters residing in
2 state representative district no. 140;
3 (17) place 17 shall be elected by voters residing in
4 state representative district no. 141;
5 (18) place 18 shall be elected by voters residing in
6 state representative district no. 142;
7 (19) place 19 shall be elected by voters residing in
8 state representative district no. 143;
9 (20) place 20 shall be elected by voters residing in
10 state representative district no. 144;
11 (21) place 21 shall be elected by voters residing in
12 state representative district no. 145;
13 (22) place 22 shall be elected by voters residing in
14 state representative district no. 146;
15 (23) place 23 shall be elected by voters residing in
16 state representative district no. 147;
17 (24) place 24 shall be elected by voters residing in
18 state representative district no. 148;
19 (25) place 25 shall be elected by voters residing in
20 state representative district no. 149;
21 (26) place 26 shall be elected by voters residing in
22 state representative district no. 150;
23 (27) place 27 shall be elected by voters residing in
24 state representative district no. 132;
25 (28) place 28 shall be elected by voters residing in
26 state representative district no. 139;
27 (29) place 29 shall be elected by voters residing in

1 state representative district no. 147;

2 (30) place 30 shall be elected by voters residing in
3 state representative district no. 148;

4 (31) place 31 shall be elected by voters residing in
5 state representative district no. 131;

6 (32) place 32 shall be elected by voters residing in
7 state representative district no. 146;

8 (33) place 33 shall be elected by voters residing in
9 state representative district no. 143;

10 (34) place 34 shall be elected by voters residing in
11 state representative district no. 142;

12 (35) place 35 shall be elected by voters residing in
13 state representative district no. 141; and

14 (36) place 36 shall be elected by voters residing in
15 state representative district no. 138.

16 Sec. 24.524. 379TH JUDICIAL DISTRICT (DALLAS COUNTY). (a)
17 The 379th Judicial District is composed of Dallas County.

18 (b) The district has 32 judges who are elected from state
19 representative districts as provided by Subsection (c). For
20 purposes of this section, a state representative district is
21 composed of the area in the district on January 1, 1989.

22 (c) At the special primary election and the general election
23 for state and county officers held in 1990, one judge shall be
24 elected for each of the following places:

25 (1) place 1 shall be elected by voters residing in
26 state representative district no. 98;

27 (2) place 2 shall be elected by voters residing in

1 state representative district no. 99;
2 (3) place 3 shall be elected by voters residing in
3 state representative district no. 100;
4 (4) place 4 shall be elected by voters residing in
5 state representative district no. 101;
6 (5) place 5 shall be elected by voters residing in
7 state representative district no. 102;
8 (6) place 6 shall be elected by voters residing in
9 state representative district no. 103;
10 (7) place 7 shall be elected by voters residing in
11 state representative district no. 104;
12 (8) place 8 shall be elected by voters residing in
13 state representative district no. 105;
14 (9) place 9 shall be elected by voters residing in
15 state representative district no. 106;
16 (10) place 10 shall be elected by voters residing in
17 state representative district no. 107;
18 (11) place 11 shall be elected by voters residing in
19 state representative district no. 108;
20 (12) place 12 shall be elected by voters residing in
21 state representative district no. 109;
22 (13) place 13 shall be elected by voters residing in
23 state representative district no. 110;
24 (14) place 14 shall be elected by voters residing in
25 state representative district no. 111;
26 (15) place 15 shall be elected by voters residing in
27 state representative district no. 112;

1 (16) place 16 shall be elected by voters residing in
2 state representative district no. 113;
3 (17) place 17 shall be elected by voters residing in
4 state representative district no. 114;
5 (18) place 18 shall be elected by voters residing in
6 state representative district no. 100;
7 (19) place 19 shall be elected by voters residing in
8 state representative district no. 114;
9 (20) place 20 shall be elected by voters residing in
10 state representative district no. 111;
11 (21) place 21 shall be elected by voters residing in
12 state representative district no. 110;
13 (22) place 22 shall be elected by voters residing in
14 state representative district no. 102;
15 (23) place 23 shall be elected by voters residing in
16 state representative district no. 108;
17 (24) place 24 shall be elected by voters residing in
18 state representative district no. 107;
19 (25) place 25 shall be elected by voters residing in
20 state representative district no. 106;
21 (26) place 26 shall be elected by voters residing in
22 state representative district no. 105;
23 (27) place 27 shall be elected by voters residing in
24 state representative district no. 104;
25 (28) place 28 shall be elected by voters residing in
26 state representative district no. 103;
27 (29) place 29 shall be elected by voters residing in

1 state representative district no. 98;

2 (30) place 30 shall be elected by voters residing in
3 state representative district no. 99;

4 (31) place 31 shall be elected by voters residing in
5 state representative district no. 101; and

6 (32) place 32 shall be elected by voters residing in
7 state representative district no. 109.

8 Sec. 24.525. 380TH JUDICIAL DISTRICT (TARRANT COUNTY). (a)
9 The 380th Judicial District is composed of Tarrant County.

10 (b) The district has 14 judges who are elected from state
11 representative districts as provided by Subsection (c). For
12 purposes of this section, a state representative district is
13 composed of the area in the district on January 1, 1989.

14 (c) At the special primary election and the general election
15 for state and county officers held in 1990, one judge shall be
16 elected for each of the following places:

17 (1) place 1 shall be elected by voters residing in
18 state representative district no. 89;

19 (2) place 2 shall be elected by voters residing in
20 state representative district no. 90;

21 (3) place 3 shall be elected by voters residing in
22 state representative district no. 91;

23 (4) place 4 shall be elected by voters residing in
24 state representative district no. 92;

25 (5) place 5 shall be elected by voters residing in
26 state representative district no. 93;

27 (6) place 6 shall be elected by voters residing in

1 state representative district no. 94;

2 (7) place 7 shall be elected by voters residing in
3 state representative district no. 95;

4 (8) place 8 shall be elected by voters residing in
5 state representative district no. 96;

6 (9) place 9 shall be elected by voters residing in
7 state representative district no. 97;

8 (10) place 10 shall be elected by voters residing in
9 state representative district no. 90;

10 (11) place 11 shall be elected by voters residing in
11 state representative district no. 95;

12 (12) place 12 shall be elected by voters residing in
13 state representative district no. 94;

14 (13) place 13 shall be elected by voters residing in
15 state representative district no. 93; and

16 (14) place 14 shall be elected by voters residing in
17 state representative district no. 92.

18 Sec. 24.526. 381ST JUDICIAL DISTRICT (BEXAR COUNTY). (a)
19 The 381st Judicial District is composed of Bexar County.

20 (b) The district has 13 judges who are elected from state
21 representative districts as provided by Subsection (c). For
22 purposes of this section, a state representative district is
23 composed of the area in the district on January 1, 1989.

24 (c) At the special primary election and the general election
25 for state and county officers held in 1990, one judge shall be
26 elected for each of the following places:

27 (1) place 1 shall be elected by voters residing in

1 state representative district no. 115;
2 (2) place 2 shall be elected by voters residing in
3 state representative district no. 120;
4 (3) place 3 shall be elected by voters residing in
5 state representative district no. 116;
6 (4) place 4 shall be elected by voters residing in
7 state representative district no. 124;
8 (5) place 5 shall be elected by voters residing in
9 state representative district no. 123;
10 (6) place 6 shall be elected by voters residing in
11 state representative district no. 122;
12 (7) place 7 shall be elected by voters residing in
13 state representative district no. 121;
14 (8) place 8 shall be elected by voters residing in
15 state representative district no. 118;
16 (9) place 9 shall be elected by voters residing in
17 state representative district no. 119;
18 (10) place 10 shall be elected by voters residing in
19 state representative district no. 117;
20 (11) place 11 shall be elected by voters residing in
21 state representative district no. 116;
22 (12) place 12 shall be elected by voters residing in
23 state representative district no. 118; and
24 (13) place 13 shall be elected by voters residing in
25 state representative district no. 120.
26 Sec. 24.527. 382ND JUDICIAL DISTRICT (TRAVIS COUNTY). (a)
27 The 382nd Judicial District is composed of Travis County.

1 (b) The district has six judges who are elected from justice
2 precincts as provided by Subsection (c). For purposes of this
3 section, a justice precinct is composed of the area in the precinct
4 on January 1, 1989.

5 (c) At the special primary election and the general election
6 for state and county officers held in 1990, one judge shall be
7 elected for each of the following places:

8 (1) place 1 shall be elected by voters residing in
9 Justice Precinct No. 1 of Travis County;

10 (2) place 2 shall be elected by voters residing in
11 Justice Precinct No. 2 of Travis County;

12 (3) place 3 shall be elected by voters residing in
13 Justice Precinct No. 3 of Travis County;

14 (4) place 4 shall be elected by voters residing in
15 Justice Precinct No. 4 of Travis County;

16 (5) place 5 shall be elected by voters residing in
17 Justice Precinct No. 5 of Travis County; and

18 (6) place 6 shall be elected by voters residing in
19 Justice Precinct No. 4 of Travis County.

20 Sec. 24.528. 383RD JUDICIAL DISTRICT (JEFFERSON COUNTY).

21 (a) The 383rd Judicial District is composed of Jefferson County.

22 (b) The district has six judges who are elected from
23 commissioners court precincts as provided by Subsection (c). For
24 purposes of this section, a commissioners court precinct is
25 composed of the area in the precinct on January 1, 1989.

26 (c) At the special primary election and the general election
27 for state and county officers held in 1990, one judge shall be

1 elected for each of the following places:

2 (1) place 1 shall be elected by voters residing in
3 Commissioners Court Precinct No. 1 of Jefferson County;

4 (2) place 2 shall be elected by voters residing in
5 Commissioners Court Precinct No. 2 of Jefferson County;

6 (3) place 3 shall be elected by voters residing in
7 Commissioners Court Precinct No. 3 of Jefferson County;

8 (4) place 4 shall be elected by voters residing in
9 Commissioners Court Precinct No. 4 of Jefferson County;

10 (5) place 5 shall be elected by voters residing in
11 Commissioners Court Precinct No. 4 of Jefferson County; and

12 (6) place 6 shall be elected by voters residing in
13 Commissioners Court Precinct No. 3 of Jefferson County.

14 Sec. 24.529. 384TH JUDICIAL DISTRICT (LUBBOCK COUNTY). (a)
15 The 384th Judicial District is composed of Lubbock County.

16 (b) The district has three judges who are elected from
17 commissioners court precincts as provided by Subsection (c). For
18 purposes of this section, a commissioners court precinct is
19 composed of the area in the precinct on January 1, 1989.

20 (c) At the special primary election and the general election
21 for state and county officers held in 1990, one judge shall be
22 elected for each of the following places:

23 (1) place 1 shall be elected by voters residing in
24 Commissioners Court Precinct No. 3 of Lubbock County;

25 (2) place 2 shall be elected by voters residing in
26 Commissioners Court Precinct No. 4 of Lubbock County; and

27 (3) place 3 shall be elected by voters residing in

1 Commissioners Court Precinct No. 2 of Lubbock County.

2 Sec. 24.530. 385TH JUDICIAL DISTRICT (ECTOR COUNTY). (a)

3 The 385th Judicial District is composed of Ector County.

4 (b) The district has three judges who are elected from
5 commissioners court precincts as provided by Subsection (c). For
6 purposes of this section, a commissioners court precinct is
7 composed of the area in the precinct on January 1, 1989.

8 (c) At the special primary election and the general election
9 for state and county officers held in 1990, one judge shall be
10 elected for each of the following places:

11 (1) place 1 shall be elected by voters residing in
12 Commissioners Court Precinct No. 2 of Ector County;

13 (2) place 2 shall be elected by voters residing in
14 Commissioners Court Precinct No. 3 of Ector County; and

15 (3) place 3 shall be elected by voters residing in
16 Commissioners Court Precinct No. 4 of Ector County.

17 Sec. 24.531. 386TH JUDICIAL DISTRICT (MIDLAND COUNTY). (a)

18 The 386th Judicial District is composed of Midland County.

19 (b) The district has two judges who are elected from
20 commissioners court precincts as provided by Subsection (c). For
21 purposes of this section, a commissioners court precinct is
22 composed of the area in the precinct on January 1, 1989.

23 (c) At the special primary election and the general election
24 for state and county officers held in 1990, one judge shall be
25 elected for each of the following places:

26 (1) place 1 shall be elected by voters residing in
27 Commissioners Court Precinct No. 3 of Midland County; and

1 (2) place 2 shall be elected by voters residing in
2 Commissioners Court Precinct No. 4 of Midland County.

3 SECTION 4. (a) Effective January 1, 1991, the following
4 sections of the Government Code are repealed:

5 (1) 24.157, 24.215, 24.256, 24.273, 24.362, 24.363,
6 24.364, 24.365, 24.368, 24.369, 24.387, 24.388, 24.406, 24.407,
7 24.409, 24.411, 24.422, 24.423, 24.424, 24.425, 24.434, 24.439,
8 24.440, 24.446, 24.447, 24.457, 24.458, 24.472, 24.616, 24.617,
9 24.618, 24.619, 24.620, 24.621, 24.622, 24.623;

10 (2) 24.146, 24.170, 24.203, 24.218, 24.236, 24.257,
11 24.259, 24.370, 24.371, 24.372, 24.373, 24.374, 24.382, 24.383,
12 24.431, 24.432, 24.433, 24.442, 24.459, 24.460, 24.468, 24.469,
13 24.475, 24.508, 24.609, 24.610, 24.611, 24.612, 24.613, 24.638,
14 24.901, 24.905;

15 (3) 24.352, 24.408, 24.410, 24.413, 24.474, 24.630,
16 24.631, 24.632, 24.633, 24.910, 24.912, 24.913;

17 (4) 24.147, 24.245, 24.249, 24.274, 24.366, 24.402,
18 24.403, 24.404, 24.405, 24.462, 24.465, 24.466, 24.467;

19 (5) 24.248, 24.380, 24.427, 24.438, 24.476, 24.477;

20 (6) 24.160, 24.359, 24.429, 24.456, 24.625, 24.920;

21 (7) 24.239, 24.414, 24.509;

22 (8) 24.172, 24.421, 24.504; and

23 (9) 24.415, 24.626.

24 (b) Effective September 1, 1990, Section 2, Chapter 632,
25 Acts of the 71st Legislature, Regular Session, 1989, and Sections
26 24.516 and 24.517, Government Code, are repealed.

27 SECTION 5. (a) The judicial offices created by this Act

1 exist for purposes of the special primary election and the general
2 election for state and county officers in 1990.

3 (b) Not later than December 15, 1990, the judge of a
4 district court abolished by this Act shall transfer all cases
5 pending in the court to another district court in the county.

6 (c) When a case is transferred from one court to another as
7 provided by Subsection (b) of this section, all processes, writs,
8 bonds, recognizances, or other obligations issued from the
9 transferring court are returnable to the court to which the case is
10 transferred as if originally issued by that court. The obligees in
11 all bonds and recognizances taken in and for a court from which a
12 case is transferred, and all witnesses summoned to appear in a
13 court from which a case is transferred, are required to appear
14 before the court to which the case is transferred as if originally
15 required to appear before the court to which the transfer is made.

16 SECTION 6. (a) This section applies only to those offices
17 abolished or created and designated by place as provided by this
18 Act.

19 (b) Nominations made by primary elections held on March 13,
20 1990, and April 10, 1990, are void. Nominations by minor political
21 parties made at conventions in 1990 on dates prescribed by Chapter
22 181 or 182, Election Code, are void. Declarations of intent filed
23 by independent candidates under Section 142.002, Election Code,
24 that were subject to the January 2, 1990, deadline, are void.

25 (c) A special general primary election shall be held on
26 August 11, 1990, and a runoff special primary election shall be
27 held, if necessary, on August 25, 1990, to make nominations for the

1 offices created and designated by place by this Act. The regular
2 filing deadline for candidates in the special general primary
3 election is 6 p.m. on the 70th day before election day.

4 (d) To the extent possible, the secretary of state shall
5 modify existing procedures, dates, and deadlines to implement this
6 Act. The secretary shall prescribe new procedures, dates, and
7 deadlines as necessary to implement this Act.

8 SECTION 7. The importance of this legislation and the
9 crowded condition of the calendars in both houses create an
10 emergency and an imperative public necessity that the
11 constitutional rule requiring bills to be read on three several
12 days in each house be suspended, and this rule is hereby suspended,
13 and that this Act take effect and be in force from and after its
14 passage, and it is so enacted.

BY

Patricia Rice

H J.R. No. 7

A JOINT RESOLUTION

1 proposing a constitutional amendment relating to the filling of
2 vacancies in the offices of district judges by appointment of the
3 governor.

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

5 SECTION 1. Article V, Section 28, of the Texas Constitution
6 is amended to read as follows:

7 Sec. 28. (a) Vacancies in the office of judges of the
8 Supreme Court, the Court of Criminal Appeals, and the Courts
9 [Court] of [Civil] Appeals [~~and--the--District-Courts~~] shall be
10 filled by the Governor until the next succeeding General Election.

11 (b) A vacancy in the office of judges of the District Courts
12 shall be filled by the Governor until the next succeeding General
13 Election from a list of nominees submitted to the Governor by court
14 commissions as provided by law.

15 (c) An appointment by the Governor under this section is
16 subject to Senate confirmation in the manner provided by Article
17 IV, Section 12, of this Constitution.

18 (d) The Legislature shall provide for the membership, terms,
19 and jurisdiction of one or more court commissions and for the
20 filling of vacancies if the Governor or a commission fails to act
21 within the prescribed time and under the provisions of law.
22 Notwithstanding Article II, Section 1, of this Constitution, the
23 authorities appointing members of a court commission may be persons
24 of more than one department of government, and the Legislature may

1 provide for Senate confirmation of appointments made by any
2 authority to such a commission or to fill a judicial office.

3 (e) Vacancies [~~and-vacancies~~] in the office of County
4 Judge and Justices of the Peace shall be filled by the
5 Commissioners Court until the next succeeding General Election.

6 SECTION 2. The following temporary provision is added to the
7 Texas Constitution:

8 TEMPORARY PROVISION. (a) This temporary provision applies
9 to the constitutional amendment relating to the appointment of
10 district judges by the governor.

11 (b) The constitutional amendment takes effect January 1,
12 1991.

13 (c) This temporary provision expires January 1, 1998.

14 SECTION 3. This proposed constitutional amendment shall be
15 submitted to the voters at an election to be held on November 6,
16 1990. The ballot shall be printed to provide for voting for or
17 against the proposition: "The constitutional amendment requiring
18 the governor to fill vacancies in the offices of district judges
19 from a list of nominees submitted by a court commission."

By Patricia Hill

H B. No. 59

A BILL TO BE ENTITLED

AN ACT

relating to court commissions for filling vacancies in the offices of district judges.

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

SECTION 1. Chapter 22, Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. SELECTION AND CONFIRMATION OF CERTAIN

JUDICIAL OFFICERS

Sec. 22.401. DEFINITION. In this subchapter "commission" means a district court commission.

Sec. 22.402. COMMISSIONS. (a) A district court commission is created in each county.

(b) A commission is composed of 15 citizens of the county who hold no other office of trust or profit under the governments of the United States, the State of Texas, or any other government, appointed as follows:

(1) one person licensed to practice law by the supreme court and three persons not licensed to practice law, not all of whom may be of the same political party, appointed by the governor, with the advice and consent of the senate;

(2) one person licensed to practice law by the supreme court and two persons not licensed to practice law, not all of whom may be of the same political party, appointed by the lieutenant governor, with the advice and consent of the senate;

1 (3) one person licensed to practice law by the supreme
2 court and two persons not licensed to practice law, not all of whom
3 may be of the same political party, appointed by the speaker of the
4 house of representatives, with the advice and consent of the
5 senate;

6 (4) three persons licensed to practice law by the
7 supreme court, appointed by the president of the state bar, with
8 the advice and consent of the senate; and

9 (5) two persons not licensed to practice law, one each
10 appointed by the chair of each of the state executive committees of
11 the two political parties the gubernatorial nominees of which
12 received the highest number of votes in the general election
13 immediately preceding the appointment, with the advice and consent
14 of the senate.

15 Sec. 22.403. APPOINTMENTS TO COMMISSION. Appointing
16 authorities shall, in addition to meeting the requirements of
17 Section 22.402, make appointments to a commission in a manner that
18 ensures that the commission is representative of the race, sex,
19 national origin, ethnicity, and geographical distribution of the
20 citizens of the county. After the appointing process has been
21 completed, the governor shall review the proposed membership of a
22 commission. If the governor determines that the membership of a
23 commission is not representative of the race, sex, national origin,
24 ethnicity, and geographical distribution of the citizens of the
25 county, the governor shall convene the appointing authorities in a
26 special meeting to appoint or reappoint persons to the commission
27 to achieve that representation on the commission.

1 Sec. 22.404. TERMS OF OFFICE. Members of a commission serve
2 staggered three-year terms. A member who has served two full terms
3 is not eligible for appointment to an additional full or unexpired
4 term. A vacancy on a commission is filled by the original
5 appointing authority for that position for the remainder of the
6 term.

7 Sec. 22.405. CHAIR. The governor shall designate the chair
8 of each commission from its members.

9 Sec. 22.406. MEETINGS; RECORDS. (a) Meetings shall be held
10 at times and places as may be designated by the chair or by any
11 five members of a commission. Meetings of a commission are subject
12 to the open meetings law, Chapter 271, Acts of the 60th
13 Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas
14 Civil Statutes).

15 (b) Commission records are subject to the open records law,
16 Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973
17 (Article 6252-17a, Vernon's Texas Civil Statutes).

18 Sec. 22.407. CONFLICTS OF INTEREST; COMMUNICATIONS. (a) A
19 member of a commission shall disclose to all other members of the
20 commission all personal and business relationships with a
21 prospective nominee that may directly or indirectly influence the
22 member's decision. If a substantial conflict of interest is
23 apparent, the member shall disqualify himself from voting on
24 further consideration of any affected prospective nominee, or the
25 commission, by a two-thirds vote of the membership of the
26 commission, may disqualify the member.

27 (b) An individual member who receives a written

1 communication relating to a candidate for judicial office shall
2 forward the communication to all other members of the commission.
3 An individual member shall prepare and forward to all other members
4 a summary of any oral conversations the individual member has
5 concerning any candidate under consideration by the commission.
6 Communications forwarded under this subsection are confidential and
7 may not be disclosed to any person not a member of the commission.
8 A member of the commission may not initiate or receive any
9 communication directly or indirectly with the governor about a
10 candidate for a vacancy before the submission of a final list of
11 nominees to the governor. The governor may not initiate any
12 communication directly or indirectly with any member of a
13 commission concerning a candidate for a judicial vacancy and may
14 not respond to any inquiry by any member of a commission concerning
15 a candidate.

16 Sec. 22.408. RULES. A commission operates pursuant to rules
17 adopted by the commission.

18 Sec. 22.409. APPROPRIATIONS. The legislature shall provide
19 the necessary appropriations for operation of the commissions,
20 including any compensation for the members.

21 Sec. 22.410. LIST OF NOMINEES. (a) When a vacancy occurs
22 in an office to which Article V, Section 28(b), of the Texas
23 Constitution applies, the district court commission of each county
24 in the judicial district shall submit to the governor a list of
25 three nominees eligible to hold the office. A commission shall
26 list the names of the nominees in alphabetical order without
27 comment or ranking.

1 (b) A commission shall hold a public hearing to take public
2 testimony regarding the proposed nominees before it submits the
3 list to the governor and shall submit a record of the hearing with
4 the list.

5 (c) Prospective nominees or third parties may submit names
6 to a commission for nomination, but applications must contain a
7 consent to the appointment and are public information on receipt by
8 the commission.

9 (d) Except as provided by Subsections (e) and (f), the
10 appropriate commissions shall submit the list and record to the
11 governor not later than the 60th day after the date a vacancy
12 occurs.

13 (e) If a vacancy occurs on or after the 155th day before the
14 date of the general election for state and county officers and
15 before the 111th day before that date, the appropriate commissions
16 shall submit the list and record to the governor not later than the
17 80th day before the date of that general election. For purposes of
18 this subchapter, a vacancy that occurs on or after the 111th day
19 before the date of the general election for state and county
20 officers occurs after the date of that election.

21 Sec. 22.411. APPOINTMENT BY GOVERNOR. (a) The governor
22 shall appoint a person to fill an existing vacancy from the list of
23 nominees submitted to the governor by the appropriate commissions
24 to fill that particular vacancy.

25 (b) Except as provided by Subsection (c), the governor shall
26 appoint a person not later than the 30th day after the date the
27 governor receives the lists.

1 (c) If the appropriate commissions are required under
2 Section 22.410(f) to submit a list not later than the 80th day
3 before the date of the general election for state and county
4 officers, the governor shall appoint a person not later than the
5 15th day after the date the governor receives the lists.

6 (d) If no list and record are submitted by the appropriate
7 commissions within the period provided by Section 22.410, the
8 governor may appoint any qualified person.

9 Sec. 22.412. FEWER THAN THREE NOMINEES. A commission may
10 submit a list of fewer than three nominees if 12 members of the
11 commission sign a certification that there are not three qualified,
12 eligible nominees for a vacancy. The certification must be a part
13 of the list of nominees submitted to the governor.

14 Sec. 22.413. COMMISSION MEMBER INELIGIBLE. A member of the
15 commission is not eligible for appointment to a state judicial
16 office during the commission term for which appointed and for three
17 years after the date the term expires.

18 SECTION 2. (a) This Act takes effect only if the
19 constitutional amendment proposed by the 71st Legislature, 2nd
20 Called Session, 1989, relating to the appointment of district
21 judges by the governor is adopted. If the amendment is adopted,
22 this Act takes effect January 1, 1991.

23 (b) The initial members of the commissions created by this
24 Act shall be appointed for terms beginning January 1, 1991. In
25 making the initial appointments, the governor, lieutenant governor,
26 speaker of the house of representatives, president of the state
27 bar, and chairs of the political parties shall act together as a

1 selection committee to ensure compliance with Subchapter E, Chapter
2 22, Government Code, as added by this Act.

3 (1) The following persons serve initial one-year
4 terms:

5 (A) one person licensed to practice law
6 appointed by the governor;

7 (B) one person not licensed to practice law
8 appointed by the governor;

9 (C) one person licensed to practice law
10 appointed by the lieutenant governor;

11 (D) one person not licensed to practice law
12 appointed by the speaker of the house; and

13 (E) one person appointed by the president of the
14 state bar.

15 (2) The following persons serve initial two-year
16 terms:

17 (A) two persons not licensed to practice law
18 appointed by the governor;

19 (B) one person not licensed to practice law
20 appointed by the lieutenant governor;

21 (C) one person licensed to practice law
22 appointed by the speaker of the house; and

23 (D) one person appointed by the president of the
24 state bar.

25 (3) The following persons serve initial three-year
26 terms:

27 (A) one person not licensed to practice law

1 appointed by the lieutenant governor;

2 (B) one person not licensed to practice law
3 appointed by the speaker of the house;

4 (C) one person appointed by the president of the
5 state bar; and

6 (D) two persons appointed one each by the chairs
7 of the political parties entitled to make appointments under
8 Subchapter E, Chapter 22, Government Code, as added by this Act.

9 SECTION 3. The importance of this legislation and the
10 crowded condition of the calendars in both houses create an
11 emergency and an imperative public necessity that the
12 constitutional rule requiring bills to be read on three several
13 days in each house be suspended, and this rule is hereby suspended.

TEXAS LEGISLATIVE COUNCIL
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~~SECOND CALLED SESSION~~

By L. Evans

H. J.R. No. 4

A JOINT RESOLUTION

1 proposing a constitutional amendment relating to the composition of
2 certain courts and to the election of justices and judges of those
3 courts and certain district courts from single-member districts or
4 divisions.

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

6 SECTION 1. Article V, Sections 2, 4, 6, and 7, of the Texas
7 Constitution are amended to read as follows:

8 Sec. 2. (a) The Supreme Court shall consist of nine [~~the~~
9 ~~Chief--Justice--and--eight~~] Justices, any five of whom shall
10 constitute a quorum, and the concurrence of five shall be necessary
11 to a decision of a case; provided, that when the business of the
12 court may require, the court may sit in sections as designated by
13 the court to hear argument of causes and to consider applications
14 for writs of error or other preliminary matters.

15 (b) No person shall be eligible to serve in the office of
16 [~~Chief--Justice--or~~] Justice of the Supreme Court unless the person
17 is licensed to practice law in this state and is, at the time of
18 election or appointment, a citizen of the United States and a
19 resident of this state, and has attained the age of thirty-five
20 years, and has been a practicing lawyer, or a lawyer and judge of a
21 court of record together at least ten years. To be eligible to
22 serve as a Justice of the Supreme Court, a person must be, at the
23 time of election or appointment, a resident of the district from
24 which the office is filled. If a Justice does not maintain

1 residence in the district during the Justice's term of office, a
2 vacancy occurs.

3 (c) The Justices shall select by majority vote, one of the
4 Justices to serve a one-year term as Chief Justice beginning
5 January 1 of each year.

6 (d) The Justices shall be elected from single-member
7 districts at the general election for state and county officers and
8 shall serve staggered six-year terms. Each Supreme Court Justice
9 serves as the presiding administrative judge for the district from
10 which elected.

11 (e) The Supreme Court districts shall be contiguous and as
12 compact as practicable and shall be coterminous with the Court of
13 Criminal Appeals districts. The districts shall have populations
14 as nearly equal as possible according to the most recent federal
15 decennial census. The Legislature shall redistrict the state after
16 the publication of each federal decennial census. At the first
17 general election following the decennial redistricting, Justices
18 shall be elected from all districts, and after taking office they
19 shall draw lots so that three of them serve six-year terms, three
20 serve four-year terms, and three serve two-year terms.

21 (f) Each Justice [~~Said-Justices-shall-be-elected-(three-of~~
22 ~~them-each-two-years)-by-the-qualified-voters--of--the--state--at--a~~
23 ~~general--election,--shall--hold--their--offices-six-years,--or-until~~
24 ~~their-successors-are--elected--and--qualified,--and]~~ shall [each]
25 receive such compensation as shall be provided by law.

26 (g) In case of a vacancy in the office of a [~~the-Chief~~
27 ~~Justice-or-any]~~ Justice of the Supreme Court, the Governor shall

1 fill the vacancy with the advice and consent of the Senate as
2 provided by Article IV, Section 12, and Article V, Section 28, of
3 this Constitution until the next general election [~~for-state~~
4 ~~officers~~], and at such general election the vacancy for the
5 unexpired term shall be filled by election by the qualified voters
6 of the district [state]. [~~The-Justices-of-the-Supreme--Court--who~~
7 ~~may--be--in--office--at--the-time-this-amendment-takes-effect-shall~~
8 ~~continue-in-office-until-the-expiration-of--their--term--of--office~~
9 ~~under--the--present--Constitution,--and--until-their-successors-are~~
10 ~~elected-and-qualified.~~]

11 Sec. 4. (a) The Court of Criminal Appeals shall consist of
12 nine [~~eight~~] Judges [~~and-one-Presiding-Judge~~].

13 (b) The Judges shall have the same qualifications and
14 receive the same salaries as the [~~Associate~~] Justices of the
15 Supreme Court[~~,--and--the--Presiding--Judge--shall--have--the--same~~
16 ~~qualifications-and-receive-the-same-salary-as-the-Chief-Justice--of~~
17 ~~the--Supreme--Court~~]. To be eligible to serve as Judge, a person
18 must be, at the time of election or appointment, a resident of the
19 district from which the office is filled. If a Judge does not
20 maintain residence in the district during his term of office, a
21 vacancy occurs.

22 (c) The Judges shall select, by majority vote, one of the
23 Judges to serve a one-year term as Presiding Judge beginning
24 January 1 of each year. The [~~Presiding-Judge-and-the~~] Judges shall
25 be elected from single-member districts [~~by-the-qualified-voters-of~~
26 ~~the--state~~] at the [a] general election for state and county
27 officers and shall serve staggered six-year terms [~~hold--their~~

1 ~~offices-for-a-term-of-six-years]~~.

2 (d) The Court of Criminal Appeals districts shall be as
3 contiguous and compact as practicable and shall be coterminous with
4 the Supreme Court districts. The districts shall have populations
5 as nearly equal as possible according to the most recent federal
6 decennial census. The Legislature shall redistrict the state after
7 the publication of each federal decennial census. At the first
8 general election following the decennial redistricting, the Judges
9 shall be elected from all districts, and after taking office they
10 shall draw lots so that three of them serve six-year terms, three
11 serve four-year terms, and three serve two-year terms.

12 (e) In case of a vacancy in the office of a Judge of the
13 Court of Criminal Appeals, the Governor shall, with the advice and
14 consent of the Senate, fill said vacancy by appointment until the
15 next succeeding general election as provided by Article IV, Section
16 12, and Article V, Section 28, of this Constitution.

17 (f) For the purpose of hearing cases, the Court of Criminal
18 Appeals may sit in panels of three Judges, the designation thereof
19 to be under rules established by the court. In a panel of three
20 Judges, two Judges shall constitute a quorum and the concurrence of
21 two Judges shall be necessary for a decision. The Presiding Judge,
22 under rules established by the court, shall convene the court en
23 banc for the transaction of all other business and may convene the
24 court en banc for the purpose of hearing cases. The court must sit
25 en banc during proceedings involving capital punishment and other
26 cases as required by law. When convened en banc, five Judges shall
27 constitute a quorum and the concurrence of five Judges shall be

1 necessary for a decision. The Court of Criminal Appeals may
2 appoint Commissioners in aid of the Court of Criminal Appeals as
3 provided by law.

4 Sec. 6. (a) The state shall be divided into nine courts of
5 appeals districts, with each district having nine [~~a-Chief-Justice,~~
6 ~~two--or--more--either~~] Justices, and such other officials as may be
7 provided by law. The Court of Appeals districts shall be
8 coterminous with the Supreme Court and Court of Criminal Appeals
9 districts. The Justices shall have the qualifications prescribed
10 for Justices of the Supreme Court. The Justices of each Court of
11 Appeals shall select, by majority vote, one of the Justices to
12 serve a one-year term as Chief Justice of that Court of Appeals
13 beginning January 1 of each year. The Court of Appeals may sit in
14 sections as authorized by law. The concurrence of a majority of
15 the judges sitting in a section is necessary to decide a case.
16 Said Court of Appeals shall have appellate jurisdiction
17 co-extensive with the limits of their respective districts, which
18 shall extend to all cases of which the District Courts or County
19 Courts have original or appellate jurisdiction, under such
20 restrictions and regulations as may be prescribed by law.
21 Provided, that the decision of said courts shall be conclusive on
22 all questions of fact brought before them on appeal or error. Said
23 courts shall have such other jurisdiction, original and appellate,
24 as may be prescribed by law.

25 Each of said Courts of Appeals shall hold its sessions at a
26 place in its district to be designated by the Legislature, and at
27 such time as may be prescribed by law.

1 (b) Said Justices shall be elected from single-member
2 divisions of court of appeals [~~by-the-qualified-voters-of-their~~
3 respective] districts at the [a] general election for state and
4 county officers. To be eligible to serve as a Justice from a court
5 of appeals district, a person must be, at the time of election or
6 appointment, a resident of the division from which the office is
7 filled. If a Justice does not maintain residence in the division
8 during his term of office, a vacancy occurs. The court of appeals
9 divisions shall be contiguous and as compact as practicable. The
10 divisions shall have populations as nearly equal as possible
11 according to the most recent federal decennial census. The
12 Legislature shall redistrict the state into court of appeals
13 districts and the districts into divisions after the publication of
14 each federal decennial census. Justices elected at the first
15 general election following the initial drawing of divisions or
16 following a redistricting into divisions serve six-year terms
17 beginning the next January 1 following the election and the terms
18 of the Justices in office expire on the day preceding that date.

19 (c) The Justices shall serve terms[~~7--for-a-term~~] of six
20 years and shall receive for their services the sum provided by law.
21 Each Court of Appeals shall appoint a clerk in the same manner as
22 the clerk of the Supreme Court which clerk shall receive such
23 compensation as may be fixed by law.

24 (d) All constitutional and statutory references to the
25 Courts of Civil Appeals shall be construed to mean the Courts of
26 Appeals.

27 (e) A vacancy in the office of a Justice of a Court of

1 Appeals is filled by appointment by the Governor with the advice
2 and consent of the Senate as provided by Article IV, Section 12,
3 and Article V, Section 28, of this constitution.

4 Sec. 7. (a) The State shall be divided into judicial
5 districts, with each district having one or more Judges as may be
6 provided by law or by this Constitution.

7 (b) The Legislature shall provide for the election of the
8 judges of the judicial districts composed entirely of one county
9 from single-member judicial divisions in the county. The number of
10 divisions in a county is equal to the number of judicial districts
11 that are composed entirely of that county. Each point in the
12 county shall be in only one division. Each division shall be
13 contiguous and as compact as practicable. The divisions in a
14 county shall be as equal in population as practicable according to
15 the most recent federal decennial census. The Legislature shall
16 redistrict the counties into judicial divisions after the
17 publication of each federal decennial census. A judge elected from
18 a division serves the entire judicial district.

19 (c) This subsection applies only to judges elected from
20 judicial divisions. Judges elected at the first general election
21 following the initial drawing of judicial divisions or following a
22 redistricting of the county into judicial divisions serve four-year
23 terms beginning the next January 1 following the election and the
24 terms of the judges serving in the judicial districts for which the
25 judicial divisions are drawn expire on the day preceding that date.

26 (d) If an additional judicial district is created for a
27 county that the Legislature is required to divide into judicial

1 divisions, the judge for that judicial district, if elected, shall
2 be elected from the entire county until the first general election
3 following the next redistricting of that county into judicial
4 divisions.

5 (e) Each district judge shall be elected by the qualified
6 voters at a General Election and shall be a citizen of the United
7 States and of this State, who is licensed to practice law in this
8 State and has been a practicing lawyer or a Judge of a Court in
9 this State, or both combined, for four (4) years next preceding his
10 election, who has resided in the district in which he was elected
11 for two (2) years next preceding his election, and who shall reside
12 in his district during his term of office and, except as provided
13 by Subsection (c) of this section, shall hold his office for the
14 period of four (4) years, and who shall receive for his services an
15 annual salary to be fixed by the Legislature.

16 (f) The Court shall conduct its proceedings at the county
17 seat of the county in which the case is pending, except as
18 otherwise provided by law. He shall hold the regular terms of his
19 Court at the County Seat of each County in his district in such
20 manner as may be prescribed by law. The Legislature shall have
21 power by General or Special Laws to make such provisions concerning
22 the terms or sessions of each Court as it may deem necessary.

23 (g) The Legislature shall also provide for the holding of
24 District Court when the Judge thereof is absent, or is from any
25 cause disabled or disqualified from presiding.

26 SECTION 2. Article V, Section 7a(i), of the Texas
27 Constitution is amended to read as follows:

1 (i) The legislature, the Judicial Districts Board, or the
2 Legislative Redistricting Board may not redistrict the judicial
3 districts to provide for any judicial district smaller in size than
4 an entire county except as provided by this section or by Section
5 7(b) of this article. Judicial districts smaller in size than the
6 entire county may be created subsequent to a general election where
7 a majority of the persons voting on the proposition adopt the
8 proposition "to allow the division of _____ County into
9 judicial districts composed of parts of _____ County." No
10 redistricting plan may be proposed or adopted by the legislature,
11 the Judicial Districts Board, or the Legislative Redistricting
12 Board in anticipation of a future action by the voters of any
13 county.

14 SECTION 3. The following temporary provision is added to the
15 Texas Constitution:

16 TEMPORARY PROVISION. (a) This temporary provision applies
17 to the constitutional amendment proposed by the 71st Legislature,
18 2nd Called Session, 1989, relating to the composition of certain
19 courts and to the election of justices and judges of those courts
20 and certain district courts from single-member districts or
21 divisions.

22 (b) The constitutional amendment takes effect January 1,
23 1992. However, the legislature shall draw the appropriate
24 districts before that date to implement the amendment.

25 (c) The terms of the eight justices and the chief justice of
26 the supreme court, the eight judges and the presiding judge of the
27 court of criminal appeals, and the justices and chief justices of

1 the courts of appeals who are serving December 31, 1992, expire
2 January 1, 1993, regardless of the length of term being served.
3 The holding of one of those offices does not disqualify a justice
4 or judge from being a candidate for nomination or for election to
5 the office of justice of the supreme court, judge of the court of
6 criminal appeals, or justice of a court of appeals from the
7 district or division in which the judge or justice resides. The
8 nine justices of the supreme court and the nine judges of the court
9 of criminal appeals elected for terms beginning January 1, 1993,
10 shall draw lots to comply with the staggered-term system prescribed
11 by the amendment.

12 (d) This temporary provision expires January 2, 1993.

13 SECTION 4. This proposed constitutional amendment shall be
14 submitted to the voters at an election to be held November 6, 1990.
15 The ballot shall be printed to provide for voting for or against
16 the proposition: "The constitutional amendment relating to the
17 composition of the supreme court, the court of criminal appeals,
18 and the courts of appeals and to the election of justices and
19 judges of those courts and certain district courts from
20 single-member districts or divisions."

By Patricia Hill

H. B. No. 51

A BILL TO BE ENTITLED

AN ACT

relating to the nonpartisan election of certain judicial officers.

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

SECTION 1. Section 41.002, Election Code, is amended to read as follows:

Sec. 41.002. GENERAL ELECTION FOR STATE AND COUNTY OFFICERS.

(a) The general election for state and county officers, including the general nonpartisan judicial election, shall be held on the first Tuesday after the first Monday in November in even-numbered years.

(b) The primary nonpartisan judicial election shall be held on the date of the general primary election.

SECTION 2. The Election Code is amended by adding Title 17 to read as follows:

TITLE 17. NONPARTISAN JUDICIAL ELECTIONS

CHAPTER 291. NONPARTISAN JUDICIAL ELECTIONS

SUBCHAPTER A. NONPARTISAN ELECTION OF JUDGES GENERALLY

Sec. 291.001. APPLICABILITY OF CHAPTER. This chapter applies only to nonpartisan judicial offices.

Sec. 291.002. JUDGES ELECTED AS NONPARTISAN CANDIDATES. All elected appellate and district judges and justices shall be elected as nonpartisan candidates in accordance with this chapter. Nomination for those offices by a political party is prohibited.

Sec. 291.003. VOTE REQUIRED FOR ELECTION. The name of each

1 candidate who qualifies for placement on the nonpartisan judicial
2 ballot shall be placed on the primary nonpartisan judicial ballot,
3 the voting on which shall be in conjunction with each party's
4 general primary election. If a candidate receives a majority of
5 the total number of votes received by all the candidates for the
6 office, the candidate shall be declared elected. If no candidate
7 receives a majority of the votes, the names of the two candidates
8 who receive the highest and second highest number of votes or who
9 tie for the highest number of votes shall be placed on the
10 nonpartisan judicial ballot at the general election for state and
11 county officers, and the candidate receiving the most votes shall
12 be declared elected.

13 Sec. 291.004. APPLICABILITY OF OTHER PARTS OF CODE. (a)
14 The other titles of this code apply to a nonpartisan judicial
15 election except provisions that are inconsistent with this title or
16 that cannot feasibly be applied in a nonpartisan judicial election.

17 (b) The primary nonpartisan judicial election is considered
18 to be the main election and the general nonpartisan judicial
19 election is considered to be the runoff election for purposes of
20 applying provisions of this code relating to tie votes, recounts,
21 election contests, and any other matters determined by the
22 secretary of state to be appropriate to primary nonpartisan
23 judicial elections.

24 Sec. 291.005. ADDITIONAL PROCEDURES. The secretary of state
25 shall prescribe any additional procedures necessary for the orderly
26 and proper administration of elections held under this chapter.

27 [Sections 291.006-291.020 reserved for expansion]

1 SUBCHAPTER B. APPLICATION FOR PLACE ON BALLOT

2 Sec. 291.021. APPLICATION REQUIRED. (a) To be entitled to
3 a place on the nonpartisan judicial election ballot, a candidate
4 must make an application for a place on the ballot.

5 (b) An application must, in addition to complying with
6 Section 141.031, be accompanied by the appropriate filing fee or,
7 instead of the filing fee, a petition that satisfies the
8 requirements prescribed by Section 141.062.

9 (c) An application filed by mail is considered to be filed
10 at the time of its receipt by the appropriate authority.

11 (d) The circulation of a petition to be filed under this
12 subchapter in connection with a candidate's application for a place
13 on the ballot does not constitute candidacy or an announcement of
14 candidacy for purposes of the automatic resignation provisions of
15 Article XVI, Section 65, or Article XI, Section 11, of the Texas
16 Constitution.

17 Sec. 291.022. AUTHORITY WITH WHOM APPLICATION FILED. An
18 application for a place on the nonpartisan judicial election ballot
19 must be filed with the secretary of state.

20 Sec. 291.023. REGULAR FILING DEADLINE. An application for a
21 place on the nonpartisan judicial election ballot must be filed not
22 later than the regular filing deadline for candidates in the
23 general primary election, except as provided by Sections 291.053
24 and 202.008.

25 Sec. 291.024. FILING FEE. (a) The filing fee for a
26 nonpartisan judicial candidate is as follows:

27 (1) office elected statewide \$3,000

1 (2) chief justice or justice, court of appeals, other
2 than a justice specified by Subdivision (3) 1,500
3 (3) chief justice or justice of a court of appeals
4 that serves a court of appeals district in which a county with a
5 population of more than 850,000 is wholly or partly
6 situated 2,000
7 (4) district judge, criminal district judge, or
8 family district judge, other than a judge specified by
9 Subdivision (5) 1,200
10 (5) district or criminal district judge of a court in
11 a judicial district wholly contained in a county with a population
12 of more than 850,000 2,000
13 (b) A filing fee received by the secretary of state shall be
14 deposited in the state treasury to the credit of the general
15 revenue fund.
16 Sec. 291.025. NUMBER OF PETITION SIGNATURES REQUIRED. The
17 minimum number of signatures that must appear on the petition
18 authorized by Section 291.021 is:
19 (1) 5,000, for a statewide office; or
20 (2) for a district office, the lesser of:
21 (A) 500; or
22 (B) two percent of the total vote received in
23 the district by all the candidates for governor in the most recent
24 gubernatorial general election, unless that number is under 50, in
25 which case the required number of signatures is the lesser of:
26 (i) 50; or
27 (ii) 20 percent of that total vote.

1 Sec. 291.026. STATEMENT ON PETITION. The following
2 statement must appear at the top of each page of a petition to be
3 filed under Section 291.021: "I know that the purpose of this
4 petition is to entitle (insert candidate's name) to have his name
5 placed on the ballot for the office of (insert office title,
6 including any place number or other distinguishing number) for the
7 nonpartisan judicial election."

8 Sec. 291.027. CERTIFICATION OF NAMES FOR PLACEMENT ON
9 PRIMARY NONPARTISAN JUDICIAL BALLOT. (a) Except as provided by
10 Subsection (c), the secretary of state shall certify in writing for
11 placement on the primary nonpartisan judicial election ballot the
12 name of each candidate who files with the secretary an application
13 that complies with Section 291.021(b).

14 (b) Not later than the deadline for the state chairman to
15 deliver to the county chairmen the certification of names for
16 placement on the general primary election ballot, the secretary of
17 state shall deliver the certification to the county clerk in each
18 county in which the candidate's name is to appear on the ballot.

19 (c) A candidate's name may not be certified:

20 (1) if, before delivering the certification, the
21 secretary of state learns that the name is to be omitted from the
22 ballot under Section 291.054; or

23 (2) for an office for which the candidate's
24 application is invalid under Section 141.033.

25 (d) A copy of each certification shall be made available on
26 request, without charge, to each newspaper published in this state
27 and to each licensed radio and television station in this state.

1 [Sections 291.028-291.050 reserved for expansion]

2 SUBCHAPTER C. WITHDRAWAL, DEATH, AND INELIGIBILITY
3 OF CANDIDATE

4 Sec. 291.051. WITHDRAWAL, DEATH, OR INELIGIBILITY GENERALLY.

5 With respect to withdrawal, death, or ineligibility of a candidate
6 in a nonpartisan judicial election, this subchapter supersedes
7 Subchapter A, Chapter 145, to the extent of any conflict.

8 Sec. 291.052. WITHDRAWAL FROM PRIMARY NONPARTISAN JUDICIAL
9 ELECTION. (a) A candidate may not withdraw from the primary
10 nonpartisan judicial election after the 62nd day before general
11 primary election day.

12 (b) A withdrawal request must be filed with the secretary of
13 state.

14 Sec. 291.053. EXTENDED FILING DEADLINE. (a) If a candidate
15 dies, withdraws, or is declared ineligible under circumstances that
16 would result in an extension of the filing deadline in a party
17 primary, the filing deadline for nonpartisan judicial candidates
18 for that office is extended in the same manner as provided for a
19 primary election.

20 (b) If the deadline for filing applications is extended,
21 notice of the extended filing shall be given in the same manner as
22 provided for a primary election.

23 Sec. 291.054. WITHDRAWN, DECEASED, OR INELIGIBLE CANDIDATE'S
24 NAME OMITTED FROM PRIMARY NONPARTISAN JUDICIAL ELECTION BALLOT. A
25 candidate's name shall be omitted from the primary nonpartisan
26 judicial election ballot if the candidate withdraws, dies, or is
27 declared ineligible on or before the 62nd day before general

1 primary election day.

2 Sec. 291.055. DECEASED OR INELIGIBLE CANDIDATE'S NAME TO
3 APPEAR ON PRIMARY NONPARTISAN JUDICIAL ELECTION BALLOT. (a) If a
4 candidate who has made an application for a place on the
5 nonpartisan judicial election ballot that complies with the
6 applicable requirements dies or is declared ineligible after the
7 62nd day before general primary election day, the candidate's name
8 shall be placed on the primary nonpartisan judicial ballot if more
9 than two candidates, including that candidate, have qualified for a
10 place on the nonpartisan judicial ballot for a particular office.

11 (b) If the name of a deceased or ineligible candidate
12 appears on the ballot, the votes cast for the candidate shall be
13 counted and entered on the official election returns in the same
14 manner as for the other candidates.

15 (c) If the deceased or ineligible candidate receives the
16 vote required for election, the resulting vacancy shall be filled
17 in the regular manner.

18 (d) If no candidate receives a majority vote in the primary
19 nonpartisan judicial election and a deceased or ineligible
20 candidate receives the vote that would entitle the candidate to a
21 place on the general nonpartisan judicial election ballot or ties
22 for that number of votes, the candidates in the general election
23 shall be determined in the regular manner but without regard to the
24 votes received by the deceased or ineligible candidate.

25 Sec. 291.056. WITHDRAWAL, DEATH, OR INELIGIBILITY OF
26 CANDIDATE IN GENERAL NONPARTISAN JUDICIAL ELECTION. The provisions
27 of this code applicable to the withdrawal, death, or ineligibility

1 of an independent candidate in the general election for state and
2 county officers apply to a nonpartisan judicial candidate in the
3 general election.

4 [Sections 291.057-291.070 reserved for expansion]

5 SUBCHAPTER D. BALLOT

6 Sec. 291.071. ORDER OF NAMES ON PRIMARY NONPARTISAN JUDICIAL
7 BALLOT; CERTIFICATION TO PARTIES. (a) The order of the
8 candidates' names on the primary nonpartisan judicial election
9 ballot shall be determined by a drawing conducted by the county
10 clerk.

11 (b) The drawing shall be conducted in the same manner and by
12 the same deadline as provided for a primary election.

13 (c) Within the time for preparing the party primary ballots
14 for a county, the county clerk shall prepare the official primary
15 nonpartisan judicial ballot and shall certify the ballot forms to
16 the primary committee of each political party that is holding a
17 primary election in the county. At the same time, the county clerk
18 shall certify the number of separate nonpartisan judicial ballots
19 that are to be printed for each precinct.

20 Sec. 291.072. NONPARTISAN JUDICIAL ELECTION BALLOT. The
21 nonpartisan judicial offices and candidates shall be listed as a
22 separate ballot on each party's primary ballot and on the general
23 election ballot, as appropriate, following the partisan offices,
24 under the heading "Nonpartisan Judicial Offices."

25 Sec. 291.073. SEPARATE NONPARTISAN JUDICIAL BALLOTS IN
26 PRIMARY. (a) A sufficient number of separate ballots, listing
27 only the nonpartisan judicial offices and candidates, shall be

1 provided for the use of voters who desire to vote in the primary
2 nonpartisan judicial election but who do not desire to vote in the
3 party primary.

4 (b) The separate nonpartisan judicial ballots and the
5 nonpartisan section on the primary ballot shall be paid for from
6 the funds appropriated for the administration of the primary
7 elections.

8 [Sections 291.074-291.090 reserved for expansion]

9 SUBCHAPTER E. CONDUCT OF ELECTION

10 Sec. 291.091. GENERAL PROCEDURE FOR CONDUCT OF PRIMARY
11 NONPARTISAN JUDICIAL ELECTION. (a) Any qualified voter is
12 eligible to vote in the primary nonpartisan judicial election
13 regardless of whether the voter desires to vote in the party
14 primary.

15 (b) The signature rosters and poll lists for the elections
16 shall be maintained to indicate the voters who vote in a party
17 primary and those who vote only in the nonpartisan judicial
18 election. The secretary of state shall prescribe procedures for
19 maintaining the signature rosters, poll lists, lists of registered
20 voters, and other precinct election records used at the election.
21 The official forms for the election records shall be prescribed to
22 reflect, as necessary, the distinction between the party voters and
23 candidates and the nonpartisan judicial voters and candidates.

24 (c) Except as otherwise provided by this chapter, the
25 primary nonpartisan judicial election shall be conducted in
26 accordance with the procedures prescribed by this code in relation
27 to the general primary election to the extent those procedures can

1 be made applicable.

2 Sec. 291.092. CERTIFICATION OF RESULTS OF PRIMARY
3 NONPARTISAN JUDICIAL ELECTION. Not later than the deadline for
4 delivering the county election returns for statewide and district
5 partisan offices to the state chairman, each county chairman shall
6 deliver a written certification of the tabulation of results from
7 the local canvass to the secretary of state.

8 Sec. 291.093. FINAL CANVASS FOR PRIMARY NONPARTISAN JUDICIAL
9 ELECTION. On the date prescribed by this code for the final
10 canvass of statewide and district offices in the party primary, the
11 final canvass for the primary nonpartisan judicial election shall
12 be conducted by the state board of canvassers.

13 Sec. 291.094. GENERAL PROCEDURE FOR CONDUCT OF GENERAL
14 NONPARTISAN JUDICIAL ELECTION. Except as otherwise provided by
15 this chapter, the general nonpartisan judicial election shall be
16 conducted and the results canvassed, tabulated, and reported in the
17 manner applicable to partisan offices in the general election.

18 SECTION 3. Section 1.005, Election Code, is amended by
19 amending Subdivision (9) and by adding Subdivision (25) to read as
20 follows:

21 (9) "Independent candidate" means a candidate in a
22 nonpartisan election or a candidate in a partisan election who is
23 not the nominee of a political party. The term does not include a
24 nonpartisan judicial candidate.

25 (25) "Nonpartisan judicial candidate" means a
26 candidate in a nonpartisan judicial election held under Chapter
27 291.

1 SECTION 4. Section 41.007(d), Election Code, is amended to
2 read as follows:

3 (d) Except as otherwise provided by this code, no [No] other
4 election may be held on the date of a primary election.

5 SECTION 5. Section 52.092, Election Code, is amended to read
6 as follows:

7 Sec. 52.092. OFFICES REGULARLY FILLED AT GENERAL ELECTION
8 FOR STATE AND COUNTY OFFICERS. (a) For an election at which
9 offices regularly filled at the general election for state and
10 county officers, including the nonpartisan judicial election, are
11 to appear on the ballot, the offices shall be listed in the
12 following order:

13 (1) offices of the federal government;

14 (2) offices of the state government:

15 (A) statewide offices;

16 (B) district offices;

17 (3) offices of the county government:

18 (A) county offices;

19 (B) precinct offices.

20 (b) Offices of the federal government shall be listed in the
21 following order:

22 (1) president and vice-president of the United States;

23 (2) United States senator;

24 (3) United States representative.

25 (c) Statewide offices of the state government shall be
26 listed in the following order:

27 (1) governor;

- 1 (2) lieutenant governor;
- 2 (3) attorney general;
- 3 (4) comptroller of public accounts;
- 4 (5) state treasurer;
- 5 (6) commissioner of the General Land Office;
- 6 (7) commissioner of agriculture;
- 7 (8) railroad commissioner[;
- 8 [~~9~~---chief-justice,-supreme-court,
- 9 [~~10~~---justice,-supreme-court,
- 10 [~~11~~---presiding-judge,-court-of-criminal-appeals,
- 11 [~~12~~---judge,-court-of-criminal-appeals].

12 (d) District offices of the state government shall be listed
13 in the following order:

- 14 (1) member, State Board of Education;
- 15 (2) state senator;
- 16 (3) state representative;
- 17 [~~4~~---chief-justice,-court-of-appeals,
- 18 [~~5~~---justice,-court-of-appeals,
- 19 [~~6~~---district-judge,
- 20 [~~7~~---criminal-district-judge,
- 21 [~~8~~---family-district-judge,]
- 22 (4) [~~9~~] district attorney;
- 23 (5) [~~10~~] criminal district attorney.

24 (e) County offices shall be listed in the following order:

- 25 (1) county judge;
- 26 (2) judge, county court at law;
- 27 (3) judge, county criminal court;

- 1 (4) judge, county probate court;
- 2 (5) county attorney;
- 3 (6) district clerk;
- 4 (7) district and county clerk;
- 5 (8) county clerk;
- 6 (9) sheriff;
- 7 (10) sheriff and tax assessor-collector;
- 8 (11) county tax assessor-collector;
- 9 (12) county treasurer;
- 10 (13) county school trustee (county with population of
- 11 two million or more);
- 12 (14) county surveyor;
- 13 (15) inspector of hides and animals.
- 14 (f) Precinct offices shall be listed in the following order:
- 15 (1) county commissioner;
- 16 (2) justice of the peace;
- 17 (3) constable;
- 18 (4) public weigher.
- 19 (g) The nonpartisan judicial offices shall be listed in the
- 20 following order:
- 21 (1) chief justice, supreme court;
- 22 (2) justice, supreme court;
- 23 (3) presiding judge, court of criminal appeals;
- 24 (4) judge, court of criminal appeals;
- 25 (5) chief justice, court of appeals;
- 26 (6) justice, court of appeals;
- 27 (7) district judge;

1 (8) criminal district judge;

2 (9) family district judge.

3 (h) [~~g~~] If two or more offices having the same title
4 except for a place number or other distinguishing number are to
5 appear on the ballot, the number shall appear as part of the office
6 title and the offices shall be listed in numerical order.

7 (i) [~~h~~] The secretary of state shall assign a place number
8 to each position to be filled at the nonpartisan judicial [~~general~~]
9 election [~~for-state-and-county-officers~~] for each full or unexpired
10 term in the following offices:

11 (1) justice, supreme court;

12 (2) judge, court of criminal appeals; and

13 (3) justice, court of appeals in a court having a
14 membership in excess of three, if distinguishing the positions to
15 be filled is necessary.

16 (j) [~~i~~] The secretary of state shall designate the
17 position of new offices on the ballot.

18 SECTION 6. Section 141.001(a), Election Code, is amended to
19 read as follows:

20 (a) To be eligible to be a candidate for, or elected or
21 appointed to, a public elective office in this state, a person
22 must:

23 (1) be a United States citizen;

24 (2) be 18 years of age or older on the first day of
25 the term to be filled at the election or on the date of
26 appointment, as applicable;

27 (3) have not been determined mentally incompetent by a

1 final judgment of a court;

2 (4) have not been finally convicted of a felony from
3 which the person has not been pardoned or otherwise released from
4 the resulting disabilities;

5 (5) have resided continuously in the state for 12
6 months and in the territory from which the office is elected for
7 six months immediately preceding the following date:

8 (A) for a candidate whose name is to appear on a
9 general primary election ballot, the date of the regular filing
10 deadline for a candidate's application for a place on the ballot;

11 (B) for an independent candidate or a
12 nonpartisan judicial candidate, the date of the regular filing
13 deadline for a candidate's application for a place on the ballot;

14 (C) for a write-in candidate, the date of the
15 election at which the candidate's name is written in;

16 (D) for a party nominee who is nominated by any
17 method other than by primary election, the date the nomination is
18 made; and

19 (E) for an appointee to an office, the date the
20 appointment is made; and

21 (6) satisfy any other eligibility requirements
22 prescribed by law for the office.

23 SECTION 7. Section 145.003(b), Election Code, is amended to
24 read as follows:

25 (b) A candidate in the general election for state and county
26 officers may be declared ineligible before the 30th day preceding
27 election day by:

1 (1) the party officer responsible for certifying the
2 candidate's name for placement on the general election ballot, in
3 the case of a candidate who is a political party's nominee; or

4 (2) the authority with whom the candidate's
5 application for a place on the ballot is required to be filed, in
6 the case of an independent candidate or a nonpartisan judicial
7 candidate.

8 SECTION 8. Section 146.021, Election Code, is amended to
9 read as follows:

10 Sec. 146.021. APPLICABILITY OF SUBCHAPTER. This subchapter
11 applies to a write-in candidate for an office that is to be voted
12 on at the general election for state and county officers, including
13 the nonpartisan judicial election.

14 SECTION 9. Section 172.024(a), Election Code, is amended to
15 read as follows:

16 (a) The filing fee for a candidate for nomination in the
17 general primary election is as follows:

18	(1) United States senator	\$4,000
19	(2) office elected statewide, except United States	
20	senator	3,000
21	(3) United States representative	2,500
22	(4) state senator	1,000
23	(5) state representative	600
24	(6) member, State Board of Education	250
25	[(7) chief justice or justice, court of	
26	appeals, other than a justice specified	
27	by Subdivision (8)	1,500

1 [(8) -- chief -- justice -- or -- justice -- of -- a -- court -- of -- appeals
 2 that -- -- serves -- a -- court -- of -- appeals
 3 district -- in -- which -- a -- county -- with -- a
 4 population -- of -- more -- than -- 850,000 -- is -- wholly
 5 or -- partly -- situated -- -- -- -- -- 2,000
 6 [(9) -- district -- judge -- or -- judge -- specified -- by
 7 Section -- 52-092 (d) -- for -- which -- this
 8 schedule -- does -- not -- otherwise -- prescribe
 9 a -- fee -- -- -- -- -- 1,200
 10 [(10) -- district -- or -- criminal -- district -- judge -- of -- a -- court
 11 in -- a -- judicial -- district -- wholly -- contained -- in
 12 a -- county -- with -- a -- population -- of -- more -- than
 13 850,000 -- -- -- -- -- 2,000]
 14 (7) [(11)] judge, statutory county court, other
 15 than a judge specified by Subdivision
 16 (8) [(12)] 1,200
 17 (8) [(12)] judge of a statutory county court in a
 18 county with a population of more than
 19 850,000 2,000
 20 (9) [(13)] district attorney, criminal district
 21 attorney, or county attorney
 22 performing the duties of a district
 23 attorney 1,000
 24 (10) [(14)] county commissioner or judge,
 25 constitutional county court:
 26 (A) county with a population of 200,000 or
 27 more 1,000

1 (B) county with a population of under
2 200,000 600
3 (11) [~~15~~] justice of the peace or constable:
4 (A) county with a population of 200,000 or
5 more 800
6 (B) county with a population of under
7 200,000 300
8 (12) [~~16~~] county surveyor, inspector of hides
9 and animals, or public weigher 50
10 (13) [~~17~~] office of the county government for which
11 this schedule does not otherwise prescribe
12 a fee 600

13 SECTION 10. Chapter 202, Election Code, is amended by
14 amending Section 202.002 and by adding Section 202.008 to read as
15 follows:

16 Sec. 202.002. VACANCY FILLED AT GENERAL ELECTION. (a) If a
17 vacancy occurs on or before the 65th day before the date of the
18 general election for state and county officers, or on or before the
19 62nd day before the date of the general primary election in the
20 case of a nonpartisan judicial office, held in the next-to-last
21 even-numbered year of a term of office, the remainder of the
22 unexpired term shall be filled at the next general election for
23 state and county officers, as provided by this chapter.

24 (b) If a vacancy occurs after the 65th day before a general
25 election day, or after the 62nd day before a general primary
26 election day in the case of a nonpartisan judicial office, an
27 election for the unexpired term may not be held at that general

1 election. The appointment to fill the vacancy continues until the
2 next succeeding general election and until a successor has been
3 elected and has qualified for the office.

4 Sec. 202.008. FILING DEADLINE FOR APPLICATION OF NONPARTISAN
5 JUDICIAL CANDIDATE. (a) A nonpartisan judicial candidate for an
6 unexpired term must file the application for a place on the ballot
7 not later than the applicable deadline for a candidate for an
8 unexpired term in the general primary election.

9 (b) The filing fee or petition requirements for a candidate
10 for an unexpired term are the same as for a candidate for a full
11 term.

12 SECTION 11. The importance of this legislation and the
13 crowded condition of the calendars in both houses create an
14 emergency and an imperative public necessity that the
15 constitutional rule requiring bills to be read on three several
16 days in each house be suspended, and this rule is hereby suspended,
17 and that this Act take effect and be in force from and after its
18 passage, and it is so enacted.

TEXAS LEGISLATIVE COUNCIL
FILE COPY

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SECOND CALLED SESSION

FILED NOV 20 1989

By

Arthur Lee

H. B. No. 58

A BILL TO BE ENTITLED

AN ACT

relating to the election of certain district judges.

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

SECTION 1. Chapter 24, Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. ELECTION FROM DIVISIONS FOR CERTAIN
JUDICIAL DISTRICTS

Sec. 24.981. JUDICIAL DIVISIONS. (a) The judges of the judicial districts composed entirely of Bexar, Dallas, Ector, Harris, Jefferson, Lubbock, Midland, Tarrant, or Travis County shall be elected from divisions within the districts that are coterminous with the commissioners court precincts in the county resulting from the first redistricting of those precincts after each decennial census. More than one judge may be elected from any division. Each county shall be redistricted into divisions during the first regular session beginning after the first redistricting of the county into commissioners precincts that takes effect after publication of each decennial census.

(b) A judge elected from a division must be a resident of the judicial district but need not be a resident of the division. The judge serves the entire judicial district.

(c) Judges elected from judicial divisions shall be elected on a nonpartisan ballot and except as provided by this subsection shall serve four-year terms. The terms begin January 1 of the year

1 following the election. All judges shall be elected at the first
2 primary election in an even-numbered year following an initial
3 drawing of judicial divisions or a redistricting of the county into
4 judicial divisions after a federal decennial census. The name of
5 each candidate who qualifies for placement on the nonpartisan
6 judicial ballot shall be placed on the primary nonpartisan judicial
7 ballot, the voting on which shall be in conjunction with each
8 party's general primary election. If a candidate receives a
9 majority of the total number of votes received by all the
10 candidates for the office, the candidate shall be declared elected.
11 If no candidate receives a majority of the votes, the names of the
12 two candidates who receive the highest and second highest number of
13 votes or who tie for the highest number of votes shall be placed on
14 the nonpartisan judicial ballot at the general election for state
15 and county officers, and the candidate receiving the most votes
16 shall be declared elected. The terms beginning before an initial
17 drawing of divisions or a redistricting expire immediately before
18 January 1 of the year following the first primary election in an
19 even-numbered year for which the drawing or redistricting takes
20 effect.

21 (d) If an additional judicial district is created for which
22 the judge is to be elected from a judicial division under
23 Subsection (a), the initial judge for the district shall be elected
24 from the entire county until the legislature has redistricted the
25 county.

26 SECTION 2. Section 172.021(e), Election Code, is repealed.

27 SECTION 3. The importance of this legislation and the

1 crowded condition of the calendars in both houses create an
2 emergency and an imperative public necessity that the
3 constitutional rule requiring bills to be read on three several
4 days in each house be suspended, and this rule is hereby suspended,
5 and that this Act take effect and be in force from and after its
6 passage, and it is so enacted.

FILED NOV 29 1989

SECOND CALLED SESSION

BY:

P. Heile

H.C.R. *34*

CONCURRENT RESOLUTION

WHEREAS, On November 8, 1989, U.S. District Judge Lucius Bunton III ruled in the case of LULAC v. Mattox that the existing at-large method of electing state district judges in nine Texas counties dilutes minority voting strength and therefore violates provisions of the federal Voting Rights Act of 1965; and

WHEREAS, In his ruling, the Honorable Lucius Bunton provided that if state lawmakers do not enact changes in the judicial selection system before January 3, 1990, he will "entertain a restraining order or motion to halt future state district court elections pending" a final order in the case; and

WHEREAS, the Honorable Lucius Bunton further acknowledged in his opinion that the issues were not an "icy" certainty; and

WHEREAS, Finding an appropriate alternative to the state's 100-year-old method of electing trial judges is a matter of the utmost importance to the state and is an appropriate topic for a lengthy study rather than a matter to be treated hastily; now, therefore, be it

RESOLVED, That the Texas Legislature hereby request that Honorable Lucius Bunton permit an interlocutory appeal of his order entered pursuant to the provisions of 28 U.S.C. 1955 and permit the 1990 judicial elections to proceed under the system; and be it further

RESOLVED, in the alternative, that the Honorable Lucius Bunton stay implementation of any final order pending appeal; and be it further

RESOLVED, In the alternative that the 1990 judicial elections in the nine counties be enjoined, give the Legislature the opportunity to address the issue during the 1991 regular session, and that these elections be held during the 1992 elections cycle; and be it further

RESOLVED, In the alternative, that in the event the Honorable Lucius Bunton orders a remedy that any elections ordered be held on a nonpartisan basis; and be it further

RESOLVED, That a copy of this resolution be forwarded to the attorney general of Texas as an official expression of the sentiment of the Texas Legislature.

FILED NOV 20 1989

By *Glaser*

H B. No. 61

A BILL TO BE ENTITLED

AN ACT

relating to the election of certain district judges from divisions within judicial districts.

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

SECTION 1. Chapter 24, Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. ELECTION FROM DIVISIONS FOR
CERTAIN JUDICIAL DISTRICTS.

Sec. 24.981. JUDICIAL DIVISIONS. (a) The judges of the judicial districts composed entirely of Bexar, Dallas, Ector, Harris, Jefferson, Lubbock, Midland, Tarrant, or Travis County whose terms expire December 31, 1990, shall be elected from divisions within the districts.

(b) The legislature shall draw the boundaries of the divisions within each judicial district as provided by this section.

(c) A judge elected from a division must be a resident of the judicial district but need not be a resident of the division. The judge serves the entire judicial district.

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,

1 and that this Act take effect and be in force from and after its
2 passage, and it is so enacted.

FEB 26 1985

MACK KIDD
PRESIDENT
P.O. BOX 1802
AUSTIN, TEXAS 78767

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PRESIDENT-ELECT
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J. MONTY BRAY, Houston—1980-81
BOB WILSON, Wichita Falls—1979-80
MICHAEL T. GALLAGHER, Houston—1978-79
JIM D. LOVETT, Clarksville—1977-78
W. DOUGLAS MATTHEWS, Houston—1976-77
JAMES L. BRANTON, San Antonio—1975-76
WAYNE FISHER, Houston—1974-75
JACK G. BANNER, Wichita Falls—1973-74
WOODSON E. DRYDEN, Beaumont—1972-73
FRANK T. ABRAHAM, Houston—1971-72
JACK C. EISENBERG, Austin—1970-71
JUDSON FRANCIS, JR., Dallas—1969-70
BILL EDWARDS, Corpus Christi—1968-69
TOM WEBB, San Angelo—1967-68
HERMAN WRIGHT, Houston—1966-67
SCOTT BALDWIN, Marshall—1965-66
RUDY RICE, San Antonio—1964-65
BOB HUFF, Lubbock—1963-64
TOM H. DAVIS, Austin—1962-63
RUSSELL M. BAKER, Dallas—1961-62
FRED ERISMAN, Longview—1960-61
KEARBY PEERY, Wichita Falls—1959-60
L.L. DUCKETT, El Campo—1958-59
WARNER F. BROCK, Houston—1957-58
ALVIS S. ELLISON, Cleveland—1956-57
JOHN L. HILL, Houston—1955-56
C.F. SULLIVANT, Gainesville—1954-55
FRANKLIN JONES, SR., Marshall—1953-54
W.A. COMBS, Houston—1952-53
JOE H. TONAHILL, Jasper—1951-52
JOHN J. WATTS, Odessa—1950-51
R. GUY CARTER, Dallas—1949-50

DIRECTOR OF PROGRAMS
JOE M. WOODS



TEXAS TRIAL LAWYERS ASSOCIATION

1220 COLORADO AUSTIN, TEXAS 78701-1878 512 476-3852

EXECUTIVE DIRECTOR
philip w. gauss, jr.

February 22, 1985

Ms. Lois Carpenter
Chairman
League of Women Voters
of Texas Education Fund
1212 Guadalupe, #107
Austin, Texas 78701

RE: Judicial Selection

Dear Ms. Carpenter:

Through the "grapevine," I hear that the League of Women Voters has adopted a position related to the manner in which judges reach the bench in Texas. This is a subject in which the organization I represent is vitally interested.

Our president, Mack Kidd (P.O. Box 1802/Austin, Tx 78767/476-4346) has done an in depth study on this issue. Attached to this note you will find a condensed version of how he and we view the "problem" and most of the "solutions" which have been offered thus far.

It is my sincere hope that you and others in your organization who are interested in this subject will read the attached carefully. If you do so and have further questions or would like to visit with us relative to this matter, we would be delighted with such an opportunity.

Regardless of whether or not the rumor I have heard is true, I believe the attached information will be informative and thereby helpful to your organization.

Respectfully,

Philip W. Gauss, Jr.
Philip W. Gauss, Jr.

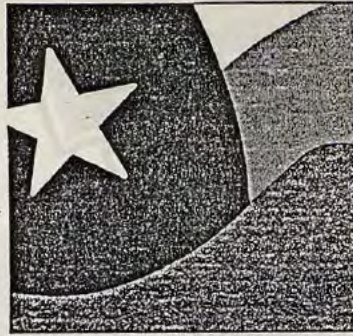
PWG/mb

cc: Mr. Mack Kidd/Mr. David Burrow/Mr. Doyle Curry

DC
LA
✓LO

bcc: Diana Clark
Lavora Arizaga
State office

Leg.



merit selection

MAR 27 1985

League of Women Voters of Texas

1212 Guadalupe Suite 109 • Austin, Texas 78701 • Tel. 512/472-1100

March 22, 1985

Mr. Philip W. Gauss, Jr.
Executive Director
Texas Trial Lawyers Association
1220 Colorado
Austin, Texas 78701

Dear Mr. Gauss:

Before responding to the substance of your letter I would like to clarify the manner in which it was addressed. The League of Women Voters of Texas Education Fund is separate and distinct from the League of Women Voters of Texas. As an educational organization, the FUND provides factual information on public issues of interest to Texas citizens. It is classified by the IRS as falling under section 501 (c) (3) of the Internal Revenue Code, never takes positions on issues, and is not a membership organization. I do serve as chairman of its board of trustees.

The League of Women Voters of Texas, on the other hand, is a membership organization with local chapters scattered around the state. While it remains nonpartisan politically, its members do select issues for concerted study and action; and I serve as its president. The IRS classifies it as a 501 (c) (4) organization. Thus your letter might more accurately have been addressed to me as President, League of Women Voters of Texas. I take pains to clarify this only because we do not want any confusion over our IRS status, especially in an association of attorneys!

Now, in answer to your question, the LWV-Texas has had a position favoring the merit selection of appellate judges since 1966. We have consistently testified in favor of such a method wherever and whenever we could. Again in 1982 we considered the question of judge selection, and in January, 1983 we added district judges to our merit selection position. Enclosed is our Advocacy Paper which was distributed to the legislature in the 1983 session and again this session. Also enclosed you will find a copy of our latest testimony given by our immediate past president, Diana Clark, before the Senate State Affairs Committee on Wednesday, February 27, 1985. (Mrs. Clark was a member of the Senate-House Select Committee on the Judiciary as is explained in her testimony.)

Mr. Philip W. Gauss, Jr., 2.

March 22, 1985

Thank you for sharing with us the remarks of your President, Mr. Mack Kidd. While we would agree with several of his points, namely his arguments against a nonpartisan system, we strongly disagree with his argument that voters would be disenfranchised by any system other than the present one. If a person chooses not to vote, as is often the case in judicial races, that voter is in no way disenfranchised, which means "to be prevented from exercising the right to vote."

We feel that the voters of Texas should be allowed to participate in the decision on the selection method they prefer; thus we are very strongly in favor of SJR 4 which would allow them to do just that.

Sincerely,

Lois Carpenter

Lois Carpenter
President

cc: Diana Clark

Enc.: Advocacy Paper
Testimony

TESTIMONY FROM DIANA CLARK, Member, Senate House Select Committee on the Judiciary
February 27, 1985

TO MEMBERS OF THE SENATE STATE AFFAIRS COMMITTEE

I am Diana Clark, from Dallas. I was appointed by the Governor to be a "public" member of the Senate-House Select Committee on the Judiciary. I am not a lawyer but I am the immediate past president of the League of Women Voters of Texas. I was assigned to the sub-committee on Judicial Selection and Related Issues chaired most ably by Senator Caperton. Other sub-committee members were Senator Glasgow, Representatives Terral Smith and Mike Toomey, Justice Joe Spurlock, II, and Max Sherman. *In the random citizens*

At two lengthy public hearings in Austin and Houston, plus a more informal meeting at the State Bar Convention in San Antonio, a variety of views were heard. While I did not keep score, my notes show that more than a majority of the speakers favored a change from the present system. It also seemed to me that views both pro and con did not fall along any perceivable party lines.

At our final mark-up session, I favored a merit selection/retention system which included district courts, but I was persuaded by Senator Caperton of the wisdom of a local option process for these courts and county courts.

Some testimony seemed to infer that the issue of the selection of the judiciary in Texas was of recent origin; due more to the fact that Texas was becoming a two-party state and more Republicans were being elected and the Democrats didn't like it. I must disagree with that inference. The League of Women Voters of Texas began a study of the judicial selection process in 1964...20 years ago...and the Constitutional Revision Commission recommended a merit system in 1972. While the Democratic Party did not officially testify before our sub-committee either in support or opposition to change, a former Democratic County Chairman did appear to support a different system than we have now. The state chairman of the Republican Party did testify in favor of a non-partisan election. The words used by his associate were "our state system could be vastly improved by getting the courts out of partisan politics". Such facts refute those who insist that this issue only took on importance after ~~the 1980 election~~ *recent*

I carefully considered the information presented by those favoring non-partisan elections but my decision was that, while straight-party tickets would not have an impact, other problems with campaigning would not be eliminated.

Therefore, with the recognition that there is NO perfect solution this side of heaven, I support SJR 4 and its companion, SB 55. My reasons are these:

Judges, unlike legislators are not supposed to represent a specific constituency but are supposed to know and apply the law impartially to rich and poor, Democrat and Republican, conservative and liberal, to the beautiful and the ugly. I cannot detect any difference in decisions rendered when Republican replaces Democrat and vice versa. But what I do detect is another kind of politics -- that between lawyers...plaintiff vs. defense. I jokingly said to a group recently, that secretly, all lawyers think they should be the only ones allowed to vote for judges.

Our present system is silent on the issue of qualifications for judges. After testimony by a witness in favor of retaining our present system, I asked how the

VOTER could determine whether or not either candidate was qualified. The response: "I don't have the answer to that".

The truth of the matter is that at present there is no way to judge the qualification of a candidate for the judiciary. Party label alone is not, in my view, a reliable guide. SJR 4 would remedy the problem in a responsible way.

I have spent the best part of the last 25 years promoting political responsibility through informed voting. Imagine, if you will, a televised debate between two candidates for the Texas Supreme Court. After the moderator took the candidates through their legal past, the discussion should logically proceed to issues for the future...where each candidate stood on everything from prison or probation, water rights, civil rights, everything! How could any judicial candidate give a judicial view on any issue which might be subject to future litigation and be considered to know and apply the law impartially? If one candidate was the incumbent, would the other challenge him or her on the merits of a past decision?

The answer to both questions above is NO..the show would end and the voter would have no more information on which to make an informed choice at the ballot box than was available before the show began. Unless, of course, it is ok to decide on the basis of the color of a tie or a particular hair style.

It is a fact, that many otherwise informed voters deliberately do not vote in judicial races because they cannot make an informed decision. I have heard it said that any change in our present system would "disenfranchise" voters. Nothing could be further from the truth. The word "disfranchise" means to deprive a citizen of the right to vote; it does not mean depriving a citizen of the right not to vote. Those who might well vote for the top of the ticket are in no way disenfranchised should they choose not to vote toward the end of the ballot.

Senator Caperton's SJR 4 addresses both issues: qualifications and voter participation. Candidates selected by the Appellate Court Commission would have been evaluated according to specific criteria without regard to political affiliation and would be deemed qualified. At the retention election six years later, the judicial record would be open to public review, situations both totally opposite to present practice.

Passage of SJR 4 by the 69th Legislature will allow voters in Texas the opportunity for the first time since 1876 to have vigorous and meaningful discussion on the question of how they will choose their judges. And because of the provision for local option elections at the district levels, voters have the additional opportunity to debate and discuss the pros and cons of a change at the basic community level. This is the very best kind of public participation in government.

I have not touched on every important issue relating to a merit system. I haven't talked about campaign funds nor name identification or the refusal of highly qualified men and women to consider being a judge because of money or political identification. These factors contributed to my decision to support a merit system of judicial selection but at this point I cannot tell which issue tipped the scale.

I very strongly urge you to recommend to the full Senate that the citizens of Texas be allowed to choose the process they think best in the selection of the state judiciary.

This request also comes from the more than 4000 women and men who belong to the League of Women Voters of Texas.

Thank you for this consideration.

NOTICE OF
PUBLIC HEARING

COMMITTEE ON: Judicial Affairs

PAGE 1

TIME: 2:00PM DAY: WED DATE: 04/08/87 PLACE: Room 105, Reagan Building

HJR39 Gibson, Bruce, ET AL
Proposing a constitutional amendment to provide for the appointment of appellate and district judges by the governor from a list of candidates submitted by court commissions, and for elections on retaining judges...

HB606 Gibson, Bruce, ET AL
Relating to the appointment of the appellate and district judges, to the apportionment of the state into courts of appeals and trial court commission districts, to the election on retention of appellate and district judges...

HB75 Wright
Relating to voting in connection with judicial races.

HB170 Wright
Relating to the nonpartisan election of judicial officers.

HB1523 Hury
Relating to certain procedures related to investigations of judges by the State Commission on Judicial Conduct.

HB820 Leonard
Relating to the civil jurisdiction of the justice court and to certain fees in justice court.

HB33 Hill, Patricia
Relating to the limitations period for fraud actions.

HB1064 Price
Relating to a penalty in a residential lease for the late payment of rent.

HB1227 Johnson, Cliff
Relating to the allowance of attorney's fees in connection with dismissal of a condemnation proceeding.

HB1521 Williamson
Relating to the period of notice of a sale of real property under a contract lien.

POSTED:

TIME:

11:30 am

CHAIRMAN: Hury

DATE:

4, 3, 87

BY:

gt

Arizona
Calif
Florida
New Mexico
Colorado
Oklahoma

} all have some form
of merit selection

appointment

• Texas already has appointments initially

CAL is both - but majority of judges are
N.M. has election elected

By _____

_____ J.R. _____

A JOINT RESOLUTION

proposing a constitutional amendment to provide for the appointment of appellate and district judges by the governor from a list of candidates submitted by court commissions, and for elections on retaining judges in office.

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

SECTION 1. That Article V, Section 2, of the Texas Constitution be amended to read as follows:

Sec. 2. The Supreme Court shall consist of the Chief Justice and eight Justices, any five of whom shall constitute a quorum, and the concurrence of five shall be necessary to a decision of a case; provided, that when the business of the court may require, the court may sit in sections as designated by the court to hear argument of causes and to consider applications for writs of error or other preliminary matters. No person shall be eligible to serve in the office of Chief Justice or Justice of the Supreme Court unless the person is licensed to practice law in this state and is, at the time of election, a citizen of the United States and of this state, and has attained the age of thirty-five years, and has been a practicing lawyer, or a lawyer and judge of a court of record together at least ten years. Said Chief Justice and Justices shall be subject [elected] (three of them each two years), in the manner provided by law, to retention or rejection on a nonpartisan ballot by the qualified voters of the state at a general election; shall hold their offices six years, or until their successors are elected and qualified; and shall each receive such compensation as shall be provided by law. ~~[In case of a vacancy in the office of the Chief Justice or any Justice of the Supreme Court, the Governor shall fill the vacancy]~~

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~~until the next general election for state officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the state. The Justices of the Supreme Court who may be in office at the time this amendment takes effect shall continue in office until the expiration of their term of office under the present Constitution, and until their successors are elected and qualified.]~~

SECTION 2. That Article V, Section 4, of the Texas Constitution be amended to read as follows:

Sec. 4. The Court of Criminal Appeals shall consist of eight Judges and one Presiding Judge. The Judges shall have the same qualifications and receive the same salaries as the ~~[Associate]~~ Justices of the Supreme Court, and the Presiding Judge shall have the same qualifications and receive the same salary as the Chief Justice of the Supreme Court. The Presiding Judge and the Judges shall be subject, in the manner provided by law, to retention or rejection on a nonpartisan ballot ~~[elected]~~ by the qualified voters of the state at a general election and shall hold their offices for a term of six years. ~~[In case of a vacancy in the office of a Judge of the Court of Criminal Appeals, the Governor shall, with the advice and consent of the Senate, fill said vacancy by appointment until the next succeeding general election.]~~

For the purpose of hearing cases, the Court of Criminal Appeals may sit in panels of three Judges, the designation thereof to be under rules established by the court. In a panel of three Judges, two Judges shall constitute a quorum and the concurrence of two Judges shall be necessary for a decision. The Presiding Judge, under rules established by the court, shall convene the court en banc for the transaction of all other business and may convene the court en banc for the purpose of hearing cases. The court must sit en banc during pro-

ceedings involving capital punishment and other cases as required by law. When convened en banc, five Judges shall constitute a quorum and the concurrence of five Judges shall be necessary for a decision. The Court of Criminal Appeals may appoint Commissioners in aid of the Court of Criminal Appeals as provided by law.

SECTION 3. That Article V, Section 6, of the Texas Constitution be amended to read as follows:

Sec. 6. The state shall be divided into courts of appeals districts, with each district having a Chief Justice, two or more other Justices, and such other officials as may be provided by law. The Justices shall have the qualifications prescribed for Justices of the Supreme Court. The Court of Appeals may sit in sections as authorized by law. The concurrence of a majority of the justices [~~judges~~] sitting in a section is necessary to decide a case. Said Court of Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error. Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law.

Each of said Courts of Appeals shall hold its sessions at a place in its district to be designated by the Legislature, and at such time as may be prescribed by law. Said Chief Justices and Justices shall be subject, in the manner provided by law, to retention or rejection on a nonpartisan ballot [~~elected~~] by the qualified voters of their respective districts at a general election, for a term of six years and shall receive for their services the sum

provided by law. Each Court of Appeals shall appoint a clerk in the same manner as the clerk of the Supreme Court which clerk shall receive such compensation as may be fixed by law.

All constitutional and statutory references to the Courts of Civil Appeals shall be construed to mean the Courts of Appeals.

SECTION 4. That Article V, Section 7, of the Texas Constitution be amended to read as follows:

Sec. 7. The State shall be divided into judicial districts, with each district having one or more Judges as may be provided by law or by this Constitution. Each district judge shall be appointed as provided by subsection (b) of Section 28 of this article or elected by the qualified voters in a non-partisan election [~~at a General Election~~] and shall be a citizen of the United States and of this State, who is licensed to practice law in this State and has been a practicing lawyer or a Judge of a Court in this State, or both combined, for four (4) years next preceding his selection [~~election~~], who has resided in the district in which he was selected [~~elected~~] for two (2) years next preceding his election, and who shall reside in his district during his term of office and hold his office for the period of six (6) [~~four (4)~~] years, and who shall receive for his services an annual salary to be fixed by the Legislature. The Court shall conduct its proceedings at the county seat of the county in which the case is pending, except as otherwise provided by law. He shall hold the regular terms of his Court at the County Seat of each County in his district in such manner as may be prescribed by law. The Legislature shall have power by General or Special Laws to make such provisions concerning the terms or sessions of each Court as it may deem necessary.

The Legislature shall also provide for the holding of District Court when the Judge thereof is absent, or is from any cause disabled or disqualified from presiding.

SECTION 5. That Article V, Section 28, of the Texas Constitution be amended to read as follows:

Sec. 28. (a) Vacancies in the office of judges of the Supreme Court, the Court of Criminal Appeals, and the Courts [Court] of [Civil] Appeals [~~and the District Courts~~] shall be filled by the Governor until the next succeeding General Election from a list of nominees submitted to him by a court commission as provided by law.

(b) Vacancies in the office of a judge of a District Court shall be filled by the Governor until the next succeeding General Election. Unless the vacancy is in the office of a judge of a judicial district in which the voters have chosen to elect district judges in a nonpartisan election, the Governor shall make the appointment from a list of nominees submitted to him by a court commission as provided by law. A district judge so appointed shall be subject, in the manner provided by law, to retention or rejection on a nonpartisan ballot by the qualified voters of the judicial district at a general election, for a term of six years.

(c) The Legislature shall provide for the membership and jurisdiction of court commissions and for the filling of vacancies if the Governor fails to act within the prescribed time and under the provisions of law. The authorities appointing members of the court commissions may be persons of more than one department of government, notwithstanding Article II, Section 1 of this Constitution. [~~and vacancies~~]

(d) Vacancies in the office of County Judge and Justices of the Peace shall be filled by the Commissioners Court until the next succeeding General Election.

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SECTION 6. That Article V, Section 28, of the Texas Constitution, be amended by adding a subsection (e) to read as follows:

(e) The county commissioners court of any county in a particular judicial district may order a local option election, in the manner provided by law, in all of the counties of the judicial district, to determine whether to select the district judge by nonpartisan election instead of as provided by subsection (b) of Section 28 of this article. If a county commissioners court calls an election in a district, the results apply to selection and retention of each district judge of a judicial district composed of the same county or counties as the district for which the election was called.

SECTION 7. That the following temporary provision be added to the Texas Constitution:

"TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by ____ J.R. No. ____, 70th Legislature, Regular Session, 1987.

(b) Section 1,2,3,4,5 and 7 of this constitutional amendment take effect January 1, 1989.

(c) Section 6 of this constitutional amendment takes effect January 1, 1988.

(d) Each supreme court justice, court of criminal appeals judge, court of appeals justice, and district judge in office on January 1, 1989, shall continue in office for the term of office to which elected.

(e) Each supreme court justice, court of criminal appeals judge, court of appeals justice, and district judge of a judicial district in which the voters have not rejected the merit selection of and retention elections for the judge, who are in office on January 1, 1989, shall be subject to retention or rejection, in the manner provided by law, at the general election preceding the expiration of the regular or unexpired term for which each was elected or

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appointed, and no vacancy exists in the office until the expiration of the term of the person who held the office on January 1, 1989, or until that person ceases to hold the office, whichever occurs first. A regular term of office beginning on or after January 1, 1989, shall be for a six-year period.

(f) District judges of judicial districts in which the voters have rejected the merit selection of and retention elections for the judge, who are in office on January 1, 1989, shall hold office until their respective terms shall expire under their present election or appointment. A regular term of office beginning on or after January 1, 1989, shall be for a six-year period.

(g) This temporary provision expires January 1, 1996.

SECTION 7. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 3, 1987. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment allowing the appointment of ~~appellate and district~~ judges by the governor from a list of nominees submitted by a ^{citizen} court commission and for an election on the issue of retaining the judges in office."

By _____

_____ . B. _____

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of the appellate and district judges, to the apportionment of the state into courts of appeals and trial court commission districts, to the election on retention of appellate and district judges, and to the nonpartisan election of district judges.

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

SECTION 1. The Texas Election Code is amended by adding a Title 17 to read as follows:

Title 17. SELECTION AND RETENTION OF JUDICIAL OFFICERS.

Chapter 281. COURT COMMISSIONS.

Subchapter A. APPELLATE COURT COMMISSION.

Section 281.001. CREATION. The Appellate Court Commission is created.

Section 281.002. MEMBERSHIP. The commission is composed of the following 15 citizens of the State who hold no other office of trust or profit under the governments of the United States, the State of Texas, or other government:

- (1) two persons licensed to practice law by the Supreme Court of Texas and two persons not licensed to practice law, not all of whom shall be of the same political party, appointed by the Governor, with the advice and consent of the Senate;
- (2) two persons licensed to practice law by the Supreme Court of Texas and one person not licensed to practice law, not all of whom shall be of the same political party, appointed by the Lieutenant Governor, with the advice and consent of the Senate;

- (3) two persons licensed to practice law by the Supreme Court of Texas and one person not licensed to practice law, not all of whom shall be of the same political party, appointed by the Speaker of the House of Representatives, with the advice and consent of the Senate;
- (4) three persons licensed to practice law by the Supreme Court of Texas, appointed by the President of the State Bar of Texas, with the advice and consent of the Senate and
- (5) two persons not licensed to practice law, one each appointed by the chairman of each of the state executive committees of the two political parties the gubernatorial nominees of which received the largest number of votes in the general election next preceding the appointment, with the advice and consent of the Senate.

Section 281.003. APPOINTMENTS TO COMMISSIONS. Appointments to the commission shall be made to ensure that the commission is representative of the race, creed, sex, religion, national origin, ethnicity and geographical distribution of the citizens of the state and complies with the requirements of this Chapter relating to the required lawyer and non-lawyer status and membership in a political party of proposed members. After the appointing process has been completed, the Governor shall review the proposed membership of the commission. If the Governor determines that the membership of the commission is not representative of the race, creed, sex, religion, national origin, ethnicity and geographical distribution of the citizens of the state, the Governor shall convene the appointing authorities in a special meeting to appoint or reappoint such persons to the commission so as to achieve that representation on the membership of the commission. No members shall be residents of the same county or of the same city.

Section 281.004. PREFERENCE OF APPOINTMENTS. In the event that appointees are proposed in excess of the number from each city and county as provided in Section 281.003, the proposed appointees of the Governor shall have preference over those of all other appointing authorities, followed by those of the Lieutenant Governor, then those of the Speaker of the House of Representatives, then those of the President of the State Bar of Texas, then those of the chairman of the state executive committee of the political party the gubernatorial nominee of which received the largest number of votes in the general election next preceding the appointment, and then those of the chairman of the state executive committee of the political party the gubernatorial nominee of which received the second largest number of votes in the general election next preceding the appointment.

Subchapter B. COURT OF APPEALS.

Section 281.021. CREATION. Court of Appeals Commissions are created.

Section 281.022. COUNTIES INCLUDED. The State of Texas is divided into thirteen (13) court of appeals commission districts composed of counties as follows:

- (1) The counties comprising the First and Fourteenth Court of Appeals Districts (Section 22.201, Government Code).
- (2) The counties comprising the Second Court of Appeals District.
- (3) The counties comprising the Third Court of Appeals District.
- (4) The counties comprising the Fourth Court of Appeals District.
- (5) The counties comprising the Fifth Court of Appeals District.
- (6) The counties comprising the Sixth Court of Appeals District.
- (7) The counties comprising the Seventh Court of Appeals District.
- (8) The counties comprising the Eighth Court of Appeals District.
- (9) The counties comprising the Ninth Court of Appeals District.

- (10) The counties comprising the Tenth Court of Appeals District.
- (11) The counties comprising the Eleventh Court of Appeals District.
- (12) The counties comprising the Twelfth Court of Appeals District.
- (13) The counties comprising the Thirteenth Court of Appeals District.

Section 281.023. MEMBERSHIP. Each commission shall be composed of the following 15 citizens of the State and residents of the court of appeals commission district who hold no other office of trust or profit under the governments of the United States, the State of Texas, or other government:

- (1) two persons licensed to practice law by the Supreme Court of Texas and two persons not licensed to practice law, not all of whom shall be of the same political party, appointed by the Governor, with the advice and consent of the Senate;
- (2) two persons licensed to practice law by the Supreme Court of Texas and one person not licensed to practice law, not all of whom shall be of the same political party, appointed by the Lieutenant Governor, with the advice and consent of the Senate;
- (3) two persons licensed to practice law by the Supreme Court of Texas and one person not licensed to practice law, not all of whom shall be of the same political party, appointed by the Speaker of the House of Representatives, with the advice and consent of the Senate;
- (4) three persons licensed to practice law by the Supreme Court of Texas, appointed by the President of the State Bar of Texas, with the advice and consent of the Senate; and
- (5) two persons not licensed to practice law, one each appointed by the chairman of each of the state executive committees of the two political parties the gubernatorial nominees of which received

the largest number of votes in the general election next pre-
ceding the appointment, with the advice and consent of the Senate.

Section 281.024. APPOINTMENTS TO COMMISSIONS. Appointments to the com-
missions shall be made to ensure that each commission is representative of the
race, creed, sex, religion, national origin, ethnicity and geographical distri-
bution of the citizens of the commission district and complies with the require-
ments of this Chapter relating to the required lawyer and non-lawyer status and
membership in a political party of proposed members. After the appointing
process has been completed, the Governor shall review the proposed membership of
each commission. If the Governor determines that the membership of any com-
mission is not representative of the race, creed, sex, religion, national ori-
gin, ethnicity and geographical distribution of the citizens of the commission
district, the Governor shall convene the appointing authorities in a special
meeting to appoint or reappoint such persons to the commission so as to achieve
that representation on the membership of the commission. No more than five
commissioners shall be residents of the same county or of the same city, and no
appointing authority shall appoint more than one member of a commission from any
one county.

Section 281.025. PREFERENCE OF APPOINTMENTS. In the event that appointees
are proposed in excess of the number from each city and county as provided in
Section 281.024, the proposed appointees of the Governor shall have preference
over those of all other appointing authorities, followed by those of the
Lieutenant Governor, then those of the Speaker of the House of Representatives,
then those of the President of the State Bar of Texas, then those of the chair-
man of the state executive committee of the political party the gubernatorial
nominee of which received the largest number of votes in the general election

next preceding the appointment, and then those of the chairman of the state executive committee of the political party the gubernatorial nominee of which received the second largest number of votes in the general election next preceding the appointment.

Subchapter C. TRIAL COURT COMMISSIONS.

Section 281.041 CREATION. Trial Court Commissions are created.

Section 281.042. COUNTIES INCLUDED. The State of Texas is divided into fifteen (15) trial court commission districts composed of counties as follows:

- (1) Harris
- (2) Dallas
- (3) Bexar
- (4) Tarrant
- (5) El Paso
- (6) Travis
- (7) The counties comprising the First Administrative Judicial Region (Section 4.002, Article 200a-1, V.T.C.S.), other than those enumerated in (1)-(6) of this Section.
- (8) The counties comprising the Second Administrative Judicial Region other than those enumerated in (1)-(6) of this Section.
- (9) The counties comprising the Third Administrative Judicial Region other than those enumerated in (1)-(6) of this Section.
- (10) The counties comprising the Fourth Administrative Judicial Region other than those enumerated in (1)-(6) of this Section.
- (11) The counties comprising the Fifth Administrative Judicial Region other than those enumerated in (1)-(6) of this Section.

- (12) The counties comprising the Sixth Administrative Judicial Region other than those enumerated in (1)-(6) of this Section.
- (13) The counties comprising the Seventh Administrative Judicial Region other than those enumerated in (1)-(6) of this Section.
- (14) The counties comprising the Eighth Administrative Judicial Region other than those enumerated in (1)-(6) of this Section.
- (15) The counties comprising the Ninth Administrative Judicial Region other than those enumerated in (1)-(6) of this Section.

Section 281.043. MEMBERSHIP. Each commission shall be composed of the following 15 citizens of the State and residents of the trial court commission district who hold no other office of trust or profit under the governments of the United States, the State of Texas, or other government:

- (1) two persons licensed to practice law by the Supreme Court of Texas and two persons not licensed to practice law, not all of whom shall be of the same political party, appointed by the Governor, with the advice and consent of the Senate;
- (2) two persons licensed to practice law by the Supreme Court of Texas and one person not licensed to practice law, not all of whom shall be of the same political party, appointed by the Lieutenant Governor, with the advice and consent of the Senate;
- (3) two persons licensed to practice law by the Supreme Court of Texas and one person not licensed to practice law, not all of whom shall be of the same political party, appointed by the Speaker of the House of Representatives, with the advice and consent of the Senate;

- (4) three persons licensed to practice law by the Supreme Court of Texas, appointed by the President of the State Bar of Texas, with the advice and consent of the Senate; and
- (5) two persons not licensed to practice law, one each appointed by the chairman of each of the state executive committees of the two political parties the gubernatorial nominees of which received the largest number of votes in the general election next preceding the appointment, with the advice and consent of the Senate.

Section 281.044. APPOINTMENTS TO COMMISSIONS. Appointments to the commissions shall be made to ensure that each commission is representative of the race, creed, sex, religion, national origin, ethnicity and geographical distribution of the citizens of the commission district and complies with the requirements of this Chapter relating to the required lawyer and non-lawyer status and membership in a political party of proposed members. After the appointing process has been completed, the Governor shall review the proposed membership of each commission. If the Governor determines that the membership of any commission is not representative of the race, creed, sex, religion, national origin, ethnicity and geographical distribution of the citizens of the commission district, the Governor shall convene the appointing authorities in a special meeting to appoint or reappoint such persons to the commission so as to achieve that representation on the membership of the commission. If a trial court commission district contains more than one county, no more than five commissioners shall be residents of the same county or of the same city, and no appointing authority shall appoint more than one member of a commission from any one county.

Section 281.045. PREFERENCE OF APPOINTMENTS. In the event that appointees are proposed in excess of the number from each city and county as provided in

Section 281.044, the proposed appointees of the Governor shall have preference over those of all other appointing authorities, followed by those of the Lieutenant Governor, then those of the Speaker of the House of Representatives, then those of the President of the State Bar of Texas, then those of the chairman of the state executive committee of the political party the gubernatorial nominee of which received the largest number of votes in the general election next preceding the appointment, and then those of the chairman of the state executive committee of the political party the gubernatorial nominee of which received the second largest number of votes in the general election next preceding the appointment.

Subchapter D. TERMS OF OFFICE; CHAIRMEN; MEETINGS AND RECORDS;
CONFLICTS OF INTEREST; COMMUNICATIONS; RULES; APPROPRIATIONS.

Section 281.061. TERMS OF OFFICE. Members of the Appellate Court Commission and each of the court of appeals and trial court commissions shall serve for staggered terms of three years. An individual who has served two full terms is not eligible for appointment to another full or unexpired term. A vacancy on a commission shall be filled by the original appointing authority for that position for the remainder of the term.

Section 281.062. DESIGNATION OF CHAIRMEN. The Governor shall designate the chairman of each commission from among any of its members.

Section 281.063. MEETINGS AND RECORDS. Meetings shall be held at times and places as may be designated by the Chairman or by any five members of a commission. Meetings of the commissions shall be subject to the provisions of the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes). All records of the commissions shall be subject to the open records law, Chapter 424, Acts

of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

Section 281.064. CONFLICTS OF INTEREST; COMMUNICATIONS. (a) A member of a commission shall disclose to all other members of the commission all personal and business relationships with a prospective nominee that may directly or indirectly influence his or her decision. If a substantial conflict of interest is apparent, the member shall disqualify himself or herself from voting on further consideration of any affected prospect or the commission itself by a two-thirds vote of the commission may disqualify the member.

(b) All written communications received by an individual member of a commission regarding a candidate for judicial office shall be forwarded to all other members of the commission. A summary of any oral conversations concerning any candidate under consideration by the commission shall be prepared and forwarded to all other members of the commission. However, any such communications shall be deemed confidential and shall not be disclosed to any person not a member of the commission. A member of a commission shall not initiate or accept any communications directly or indirectly with the Governor about the candidates for a vacancy prior to the submission of the final list of nominees to the Governor. The Governor shall not initiate any communication directly or indirectly with any member of any commission concerning any candidates for a judicial vacancy nor shall the Governor respond to any inquiry by any member of a commission concerning such candidates.

Section 281.065 RULES. The Appellate Court Commission shall operate pursuant to such rules as it may promulgate. Each court of appeals and trial court commission shall operate under uniform statewide rules which shall be promulgated by the Appellate Court Commission.

Section 281.066. APPROPRIATIONS. The Legislature shall provide the necessary appropriations for operation of the commissions, including compensation, if any, of the members.

Chapter 282. APPOINTMENT OF NOMINEES.

Subchapter A. APPELLATE COURT VACANCIES.

Section 282.001. LIST OF NOMINEES. When a vacancy occurs in, or when an incumbent announces his intention to vacate, the office of a supreme court justice or a court of criminal appeals judge, the Appellate Court Commission shall submit to the Governor a list of three nominees eligible to hold the vacant office not later than 60 days after the vacancy occurs. Prospective nominees or third parties may submit names to the commission for nomination but applications must contain a consent to the appointment and are public information upon receipt by the Commission. The names of the nominees shall be listed in alphabetical order without comment or ranking.

Section 282.002. APPOINTMENT BY GOVERNOR. The Governor shall appoint the person to fill the vacancy from the list of nominees submitted to him to fill that particular vacancy.

Subchapter B. COURT OF APPEALS VACANCIES.

Section 282.021. LIST OF NOMINEES. When a vacancy occurs in, or when an incumbent announces his intention to vacate, the office of a court of appeals justice, the court of appeals commission of the district in which the vacancy occurs shall submit to the Governor a list of three nominees eligible to hold the vacant office not later than 60 days after the vacancy occurs. Prospective nominees or third parties may submit names to a commission for nomination but applications must contain a consent to the appointment and are public infor-

mation upon receipt by the commission. The names of the nominees shall be listed in alphabetical order without comment or ranking.

Section 282.022. APPOINTMENT BY GOVERNOR. The Governor shall appoint the person to fill the vacancy from the list of nominees submitted to him to fill that particular vacancy.

Subchapter C. DISTRICT COURT VACANCIES.

Section 282.041. LIST OF NOMINEES. When a vacancy occurs in, or when an incumbent announces his intention to vacate, the office of district court judge in a judicial district in which the voters have not rejected merit selection of and retention elections for the judge, the trial court commission in the district in which the vacancy occurs shall submit to the Governor a list of three nominees eligible to hold the vacant office not later than 60 days after the vacancy occurs. Prospective nominees or third parties may submit names to a commission for nomination but applications must contain a consent to the appointment and are public information upon receipt by the commission. The names of the nominees shall be listed in alphabetical order without comment or ranking.

Section 282.042. APPOINTMENT BY GOVERNOR. The Governor shall appoint the person to fill the vacancy from the list of nominees submitted to him to fill that particular vacancy.

Section 282.043. JOINT LISTS. If a judicial district contains counties in more than one trial court commission district, the trial court commissions having jurisdiction shall jointly submit a single list of three nominees. Each nominee must have the approval of each commission having jurisdiction.

Subchapter D. NOMINEES; DEFAULT IN APPOINTMENT.

Section 282.061. LESS THAN THREE NOMINEES. A commission or commissions acting jointly, may submit a list of less than three nominees if 12 members of each commission sign a certification that there are not three qualified eligible nominees for the vacancy. The certification shall be a part of the list of nominees submitted to the Governor.

Section 282.062. GOVERNOR FAILS TO APPOINT. If the Governor fails to make the appointment within 30 days after receiving the list of nominees, the Lieutenant Governor shall make the appointment from the list. If the Lieutenant Governor fails to make the appointment within 15 days thereafter, the Speaker of the House of Representatives shall make the appointment from the list. If the Speaker fails to make the appointment within 15 days thereafter, the commission, or commissions acting jointly, shall by two-thirds vote of the membership thereof, make the appointment. Appointments shall be made with the advice and consent of the Senate.

Section 282.063. MEMBER OF COMMISSION INELIGIBLE. A member of a commission is not eligible for appointment to a state judicial office during the term for which appointed and for a period of three years thereafter.

Subchapter E. INITIAL TERM OF OFFICE.

Section 282.081. SUBJECT TO RETENTION ELECTION. A justice or judge appointed to an initial term as provided by this Chapter is subject to retention or rejection for a term on a nonpartisan ballot at the first general election for state and county officers held more than one year after the date the oath of office is taken.

Section 282.082. INITIAL TERM. The initial term shall expire on January 1 following the general election as provided in Section 282.081.

Section 282.083. EFFECT OF ELECTION. If a majority of those voting on the question vote against the retention of the justice or judge, a vacancy in the office will exist on the first day of the following January, and the vacancy shall be filled in the manner provided by this Chapter. If a majority of those voting on the question vote for the retention of the justice or judge, the person shall remain in office for the unexpired term, or for a regular term of six years, beginning on the first day of the following January.

Chapter 283. ELECTION ON RETENTION OF APPELLATE AND DISTRICT JUDGES

Section 283.001 DECLARATION OF CANDIDACY. Not later than 6 p.m. on the first Monday in February preceding the last general election before the expiration of the term of office, each justice of the Supreme Court, each judge of the Court of Criminal Appeals, each justice of a court of appeals and each district judge of a judicial district in which the voters have not rejected merit selection of and retention elections for the judge, who desires to continue to serve in that office shall file with the secretary of state a declaration of candidacy to succeed himself. A declaration may not be filed earlier than 30 days before the first Monday in February. If no such declaration is filed, the office shall become vacant upon expiration of the current term of office. At least 30 days before the general election the Secretary of State shall notify the appropriate court commission of the offices for which the term is to expire and for which no declaration of candidacy has been filed by the incumbent justice or judge.

Section 283.002. RETENTION BALLOT. If a declaration is filed, the name of the incumbent 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 and under the heading "Nonpartisan Judicial Offices," adapted to the office and styled in substance as follows:

"Shall Justice (Judge)-----
be retained in office as justice (judge) of the
----- Court?"

-----"Yes"

-----"No"

Section 283.003. ORDER OF OFFICES. The titles of the nonpartisan judicial offices shall be arranged on the ballot in the relative order prescribed by Section 52.092.

Section 283.004. PROCEDURE IN THE GENERAL ELECTION. (a) CONDUCT OF THE VOTING, CANVASS OF RETURNS. Except as otherwise provided by this Chapter, the retention election for nonpartisan judicial officers shall be conducted and the votes shall be canvassed in the same manner as for partisan offices in the election.

"(b) VOTE NECESSARY FOR ELECTION; CERTIFICATES OF ELECTION. If a majority of those voting on the question vote against the retention of the justice or judge, a vacancy in the office will exist on the first day of the following January. If a majority of those voting on the question vote for the retention of the incumbent justice or judge, the person shall remain in office for the unexpired or regular term of office beginning on the first day of the following January. If a deceased candidate receives the necessary votes for retention, the vacancy shall be filled as in case of a vacancy occurring after the election. Certificates of election shall be issued to the retained candidates in the same manner as provided for candidates elected to partisan offices.

Section 283.005. CAMPAIGN CONTRIBUTIONS AND EXPENDITURES. Candidates for retention of a judicial office are subject to the provisions of Title 15 of this code, and they shall keep a record of their contributions and expenditures and

shall file statements thereof on the same basis as required of other candidates for state and district offices.

Section 283.006. APPLICABILITY OF OTHER PARTS OF CODE. The other titles of this code apply to a nonpartisan judicial election except provisions that are inconsistent with this Chapter or that cannot feasibly be applied in a nonpartisan judicial retention election.

Section 283.007. ADDITIONAL PROCEDURES. The secretary of state shall prescribe any additional procedures necessary for the orderly and proper administration of elections held under this Chapter.

SECTION 2. Title 17, Texas Election Code, is amended by adding Chapter 284 to read as follows:

Chapter 284. ELECTION ON MERIT SELECTION OF AND RETENTION ELECTIONS FOR DISTRICT JUDGES.

Section 284.001. LOCAL OPTION ELECTIONS. (a) The county commissioners court of any county in a particular judicial district may order a local option election in all of the counties of the judicial district to determine whether to select and retain the district judge in nonpartisan elections as provided by Chapter 285 of this Code, rather than the manner provided by Chapters 282 and 283. If a county commissioners court calls an election in a district, the results apply to selection and retention of each district judge of a judicial district composed of the same county or counties as the district for which the election was called.

Section 284.002. BALLOTS. If a commissioners court calls an election, the commissioners court shall order the ballot printed "Rejecting the merit selection of and retention election for the district judge(s) of the ---- District Court(s)."

Section 284.003. VOTES REQUIRED. Each qualified voter in the counties in the judicial district is entitled to vote on the question. The question is determined by a majority vote of those voting on the question.

Section 284.004. SUBSEQUENT ELECTIONS. If the voters do not reject merit selection and retention elections, another vote on the issue may not be held for one year. If the voters do reject merit selection and retention elections, a subsequent vote to authorize merit selection may be held at any time at least one year thereafter. The election shall be held as otherwise provided by this Chapter, except that the ballot shall be printed "Authorizing the merit selection of and retention election for the District Judge(s) of the ----- District Court(s)."

Section 284.005. REORGANIZATION; NEW DISTRICTS. Reorganization of a judicial district does not affect the results of the election for a particular district, but a local option election is necessary to reject merit selection of and retention elections for a judge of a newly created judicial district unless the voters in all of the counties in the newly created district have previously rejected merit selection and retention elections for previously existing districts in those counties.

Section 284.006. ELECTION PROCEDURES. The election procedures and canvassing of the vote shall be as provided by general law for elections in this state. Each county in the district shall take the necessary actions to conduct the election and shall pay its share of the costs to hold the election.

SECTION 3. Title 17, Election Code, is amended by adding a Section 285 to read as follows:

Chapter 285. NONPARTISAN JUDICIAL ELECTIONS.

Subchapter A. NONPARTISAN ELECTION OF DISTRICT JUDGES.

Section 285.001. APPLICABILITY OF CHAPTER. This Chapter applies only to the offices of district judge in a judicial district in which the voters have

rejected merit selection and retention elections in a vote on the issue as provided by Chapter 284.

Section 285.002. JUDGES ELECTED AS NONPARTISAN CANDIDATES. All district judges of judicial districts in which the voters have rejected merit selection and retention elections shall be elected as nonpartisan candidates in accordance with this Chapter. Nomination for those offices by a political party is prohibited.

Section 285.003. VOTE REQUIRED FOR ELECTION. (a) If only one or two candidates qualify for a place on the nonpartisan judicial ballot for a particular office, the name of each candidate shall be placed on the nonpartisan judicial ballot at the general election for state and county officers, and the candidate receiving the most votes shall be declared elected.

(b) If more than two candidates qualify for a place on the nonpartisan judicial ballot for a particular office, the name of each candidate shall be placed on the primary nonpartisan judicial ballot, the voting on which shall be in conjunction with each party's general primary election. If a candidate receives a majority of the total number of votes received by all the candidates for the office, the candidate shall be declared elected. If no candidate receives a majority of the votes, the names of the two candidates who receive the highest and second highest number of votes or who tie for the highest number of votes shall be placed on the nonpartisan judicial ballot at the general election for state and county officers, and the candidate receiving the most votes shall be declared elected.

Section 285.004. APPLICABILITY OF OTHER PARTS OF CODE. (a) The other titles of this code apply to a nonpartisan judicial election except provisions that are inconsistent with this chapter or that cannot feasibly be applied in a nonpartisan judicial election.

(b) If a primary judicial election is held, that election is considered to be the main election and the general nonpartisan judicial election is considered to be the runoff election for the purposes of applying provisions of this code relating to tie votes, recounts, election contests, and any other matters determined by the secretary of state to be appropriate to primary nonpartisan judicial elections.

Section 285.006. COMPENSATION OF PARTIES. In each county where a primary nonpartisan judicial election is held in conjunction with the partisan primary elections, the political parties conducting primaries will be compensated for conducting the primary nonpartisan judicial election by payment of three-quarters of the filing fees attributable to the offices involved in the primary nonpartisan judicial election, to be distributed, within 120 days from the date of the primary, in the percentage determined by dividing the total number of primary voters in all primaries into the total votes cast in each party's primary.

Subchapter B. APPLICATION FOR PLACE ON BALLOT.

Section 285.021. APPLICATION REQUIRED. (a) To be entitled to a place on the nonpartisan judicial election ballot, a candidate must make an application for a place on the ballot.

(b) An application must, in addition to complying with Section 141.031, be accompanied by the appropriate filing fee or, instead of the filing fee, a petition that satisfies the requirements prescribed by Section 141.062.

(c) An application filed by mail is considered filed at the time of its receipt.

(d) The circulation of a petition to be filed under this subchapter in connection with a candidate's application for a place on the ballot does not

constitute candidacy or an announcement of candidacy for purposes of the automatic resignation provisions of Article XVI, Section 65, or Article XI, Section 11, of the Texas Constitution.

Section 285.022. AUTHORITY WITH WHOM APPLICATION FILED. An application for a place on the nonpartisan judicial election ballot must be filed with:

- (1) the secretary of state, for an office filled by voters of more than county; or
- (2) the county clerk, for an office filled by voters of a single county.

Section 285.023. REGULAR FILING DEADLINE. An application for a place on the nonpartisan judicial election ballot must be filed no later than the regular filing deadline for candidates in the general primary election, except as provided by Sections 285.053 and 202.008.

Section 285.024. FILING FEE. (a) The filing fee for a nonpartisan judicial candidate is as follows:

- (1) district judge, criminal district judge, or family district judge, other than a judge specified by Subdivision (2) 1,200
- (2) district or criminal district judge of a court in a judicial district wholly contained in a county with a population of more than 2,400,000 2,000

(b) A filing fee received by the secretary of state shall be deposited in the state treasury to the credit of the general revenue fund, and a filing fee received by the county clerk shall be deposited in the county treasury to the credit of the county general fund. Political parties conducting the primary nonpartisan judicial election shall be compensated from the fees as provided by Section 285.006.

Section 285.025. NUMBER OF PETITION SIGNATURES REQUIRED. The minimum number of signatures that must appear on the petition authorized by Section 285.021 is the less of:

- (1) 500; or
- (2) two percent of the total vote received in the district by all candidates for governor in the most recent gubernatorial general election, unless that number is under 25, in which case the required number of signatures is the lesser of:
 - (A) 25; or
 - (B) 10 percent of that total vote.

Section 285.026. STATEMENT ON PETITION. The following statement must appear at the top of each page of a petition authorized by Section 285.021: "I know that the purpose of this petition is to entitle (insert candidate's name) to have his name placed on the ballot for the office of (insert office title) for the primary nonpartisan judicial election."

Section 285.027. CERTIFICATION OF NAMES FOR PLACEMENT ON PRIMARY NONPARTISAN JUDICIAL BALLOT. (a) Except as provided by Subsection (c), the secretary of state or county clerk shall certify in writing for placement on the primary nonpartisan judicial election ballot the name of each candidate who files an application that complies with Section 285.021(b).

(b) Not later than the deadline for the state chairman to deliver to the county chairmen the certification of names for placement on the general primary election ballot, the secretary of state shall deliver the certification to the county clerk in each county in which the candidate's name is to appear on the ballot.

(c) A candidate's name may not be certified:

(1) if, before delivering the certification, the secretary of state or county clerk learns that the name is to be omitted from the ballot under Section 285.054; or

(2) for an office for which the candidate's application is invalid under Section 141.033.

(d) A copy of each certification shall be made available on request, without charge, to each newspaper published in this state and to each licensed radio and television station in this state.

Subchapter C. WITHDRAWAL, DEATH, AND INELIGIBILITY OF CANDIDATE.

Section 285.051. WITHDRAWAL, DEATH, OR INELIGIBILITY GENERALLY. With respect to withdrawal, death, or ineligibility of a candidate in a nonpartisan judicial election, this subchapter supersedes Subchapter A, Chapter 145, to the extent of any conflict.

Section 285.052. WITHDRAWAL FROM PRIMARY NONPARTISAN JUDICIAL ELECTION.

(a) A candidate may not withdraw from the primary nonpartisan judicial election after the 62nd day before general primary election day.

(b) A withdrawal request must be filed with the authority with whom the withdrawing candidate's application for a place on the ballot is required to be filed.

Section 285.053. EXTENDED FILING DEADLINE. (a) If a candidate dies, withdraws, or is declared ineligible under circumstances that would result in an extension of the filing deadline in a party primary, the filing deadline for nonpartisan judicial candidates for that office is extended in the same manner as provided for a primary election.

(b) If the deadline for filing applications is extended, notice of the extended filing shall be given in the same manner as provided for a primary election.

Section 285.054. WITHDRAWN, DECEASED, OR INELIGIBLE CANDIDATE'S NAME OMITTED FROM PRIMARY NONPARTISAN JUDICIAL ELECTION BALLOT. A candidate's name shall be omitted from the primary nonpartisan judicial election ballot if the candidate withdraws, dies, or is declared ineligible on or before the 62nd day before general primary election day.

Section 285.055. DECEASED OR INELIGIBLE CANDIDATE'S NAME TO APPEAR ON PRIMARY NONPARTISAN JUDICIAL ELECTION BALLOT. (a) If a candidate who has made an application for a place on the nonpartisan judicial election ballot that complies with the applicable requirements dies or is declared ineligible after the 62nd day before general primary election day, the candidate's name shall be placed on the primary nonpartisan judicial ballot if more than two candidates, including that candidate, have qualified for a place on the nonpartisan judicial ballot for a particular office.

(b) If the name of a deceased or ineligible candidate appears on the ballot, the votes cast for the candidate shall be counted and entered on the official election returns in the same manner as for the other candidates.

(c) If the deceased or ineligible candidate receives the vote required for election, the resulting vacancy shall be filled in the regular manner.

(d) If no candidate receives a majority vote in the primary nonpartisan judicial election and a deceased or ineligible candidate receives the vote that would entitle the candidate to a place on the general nonpartisan judicial election ballot or ties for that number of votes, the candidates in the general election shall be determined in the regular manner but without regard to the votes received by the deceased or ineligible candidate.

Section 285.056. WITHDRAWAL, DEATH, OR INELIGIBILITY OF CANDIDATE IN GENERAL NONPARTISAN JUDICIAL ELECTION. The provisions of this code applicable to the withdrawal, death, or ineligibility of an independent candidate in the general election for state and county officers apply to a nonpartisan judicial candidate in the general election.

Subchapter D. BALLOT.

Section 285.071. ORDER OF NAMES ON PRIMARY NONPARTISAN JUDICIAL BALLOT; CERTIFICATION TO PARTIES. (a) The order of the candidates' names on the primary nonpartisan judicial election ballot shall be determined by a drawing conducted by the county clerk.

(b) The drawing shall be conducted in the same manner and by the same deadline as provided for a primary election.

(c) Within the time for preparing the party primary ballots for a county, the county clerk shall prepare the official primary nonpartisan judicial ballot and shall certify the ballot forms to the primary committee of each political party that is holding a primary election in the county. At the same time, the county clerk shall certify the number of separate nonpartisan judicial ballots that are to be printed for each precinct.

Section 285.072. NONPARTISAN JUDICIAL ELECTION BALLOT. The nonpartisan judicial offices and candidates, including those officers in which a retention election is being held in accordance with Chapter 283, shall be listed as a separate ballot on each party's primary ballot and on the general election ballot, as appropriate, following the partisan offices, under the heading "Nonpartisan Judicial Offices," and in the relative order prescribed by Section 52.092.

Section 285.073. SEPARATE NONPARTISAN JUDICIAL BALLOTS IN PRIMARY. (a) A sufficient number of separate ballots, listing only the nonpartisan judicial offices and candidates, shall be provided for the use of voters who desire to vote in the primary nonpartisan judicial election but who do not desire to vote in the party primary.

(b) The separate nonpartisan judicial ballots and the nonpartisan section on the primary ballot shall be paid for from the funds appropriated for the administration of the primary elections.

Subchapter E. CONDUCT OF ELECTION.

Section 285.091. GENERAL PROCEDURE FOR CONDUCT OF PRIMARY NONPARTISAN JUDICIAL ELECTION. (a) Any qualified voter is eligible to vote in the primary nonpartisan judicial election regardless of whether the voter desires to vote in the party primary.

(b) The signature rosters and poll lists for the elections shall be maintained to indicate the voters who vote in a party primary and those who vote only in the nonpartisan judicial election. The secretary of state shall prescribe procedures for maintaining the signature rosters, poll lists, lists of registered voters, and other precinct election records used at the election. The official forms for the election records shall be prescribed to reflect, as necessary, the distinction between the party voters and candidates and the nonpartisan judicial voters and candidates.

(c) Except as otherwise provided by this Chapter, the primary nonpartisan judicial election shall be conducted in accordance with the procedures prescribed by this code in relation to the general primary election to the extent those procedures can be made applicable.

Section 285.092. CERTIFICATION OF RESULTS OF PRIMARY NONPARTISAN JUDICIAL ELECTION. Not later than the deadline for delivering the county election returns for statewide and district partisan offices to the state chairman, each county chairman shall deliver a written certification of the tabulation of results from the local canvass for nonpartisan judicial offices to the secretary of state.

Section 285.093. FINAL CANVASS FOR PRIMARY NONPARTISAN JUDICIAL ELECTION. On the date prescribed by this code for the final canvass of statewide and district offices in the party primary, the final canvass for the primary nonpartisan judicial election shall be conducted by the state board of canvassers.

Section 285.094. GENERAL PROCEDURE FOR CONDUCT OF GENERAL NONPARTISAN JUDICIAL ELECTION. Except as otherwise provided by this Chapter, the general nonpartisan judicial election shall be conducted and the results canvassed, tabulated, and reported in the manner applicable to partisan offices in the general election.

SECTION 4. Section 1.005, Election Code, is amended by amending Subdivision (9) and by adding Subdivision (25) to read as follows:

(9) "Independent candidate" means a candidate in a nonpartisan election or a candidate in a partisan election who is not the nominee of a political party. The term does not include a nonpartisan judicial candidate.

(25) "Nonpartisan judicial candidate" means a candidate in a nonpartisan judicial election held under Chapter 285.

SECTION 5. Section 41.002, Election Code, is amended to read as follows:

Section 41.002. GENERAL ELECTION FOR STATE AND COUNTY OFFICERS. (a) The general election for state and county officers, including the general nonpar-

tisan judicial election, and the election on retention or rejection of appellate and district judges, shall be held on the first Tuesday after the first Monday in November in even-numbered years.

(b) Any primary nonpartisan judicial election shall be held on the date of the general primary election.

SECTION 6. Section 41.007(d), Election Code, is amended to read as follows:

(d) Except as otherwise provided by this code, no [No] other election may be held on the date of a primary election.

SECTION 7. Chapter 52, Election Code, is amended by adding a Section 52.074 to read as follows:

Section 52.074. When judicial officers are to be voted upon in a nonpartisan retention election or a nonpartisan judicial election, as provided by Chapters 283 and 285 of this code, the ballot for the general election shall be prepared as provided by those Chapters.

SECTION 8. Section 52.092, Election Code, is amended to read as follows:

Section 52.092. OFFICES REGULARLY FILLED AT GENERAL ELECTION FOR STATE AND COUNTY OFFICERS. (a) For an election at which offices regularly filled at the general election for state and county officers, including the nonpartisan retention and nonpartisan judicial elections, are to appear on the ballot, the offices shall be listed in the following order:

- (1) offices of the federal government;
- (2) offices of the state government:
 - (A) statewide offices;
 - (B) district offices:

(3) offices of the county government:

- (A) county offices;
- (B) precinct offices.

(b) Offices of the federal government shall be listed in the following order:

- (1) president and vice-president of the United States;
- (2) United States senator;
- (3) United States representative.

(c) Statewide offices of the state government shall be listed in the following order:

- (1) governor;
- (2) lieutenant governor;
- (3) attorney general;
- (4) comptroller of public accounts;
- (5) state treasurer;
- (6) commissioner of the General Land Office;
- (7) commissioner of agriculture;
- (8) railroad commissioner[+]
- ~~[(9) chief justice, supreme court;~~
- ~~[(10) justice, supreme court;~~
- ~~[(11) presiding judge, court of criminal appeals;~~
- ~~[(12) judge, court of criminal appeals].~~

(d) District offices of the state government shall be listed in the following order:

- (1) member, State Board of Education;
- (2) state senator;
- (3) state representative;

- ~~[(4) chief justice, court of appeals;~~
- ~~[(5) associate justice, court of appeals;~~
- ~~[(6) district judge;~~
- ~~[(7) criminal district judge;~~
- ~~[(8) family district judge;]~~
- (4) ~~[(9)]~~ district attorney;
- (5) ~~[(10)]~~ criminal district attorney.

(e) County offices shall be listed in the following order:

- (1) county judge;
- (2) judge, county court at law
- (3) judge, county criminal court;
- (4) judge, county probate court;
- (5) county attorney;
- (6) district clerk;
- (7) district and county clerk;
- (8) county clerk;
- (9) sheriff;
- (10) sheriff and tax assessor-collector;
- (11) county tax assessor-collector;
- (12) county treasurer;
- (13) county school trustee (county with population of two million or more);
- (14) county surveyor;
- (15) inspector of hides and animals.

(f) Precinct offices shall be listed in the following order:

- (1) county commissioner;
- (2) justice of the peace;

- (3) constable;
- (4) public weigher.

(g) The nonpartisan judicial offices shall be listed in the following order:

- (1) chief justice, supreme court;
- (2) justice, supreme court;
- (3) presiding judge, court of criminal appeals;
- (4) judge, court of criminal appeals;
- (5) chief justice, court of appeals;
- (6) justice, court of appeals;
- (7) district judge;
- (8) criminal district judge;
- (9) family district judge.

(h) [~~g~~] If two or more offices having the same title except for a place number or other distinguishing number are to appear on the ballot, the number shall appear as part of the office title and the offices shall be listed in numerical order.

(i) [~~h~~] The secretary of state shall assign a place number to each position for which a retention [~~to be filled at the general~~] election [~~for state and county officers~~] is being held for each full or unexpired term in the following offices:

- (1) justice, supreme court;
- (2) judge, court of criminal appeals; and
- (3) [~~associate~~] justice, court of appeals in a court having a membership in excess of three, if distinguishing the positions to be filled is necessary.

(j) [~~i~~] The secretary of state shall designate the position of new offices on the ballot.

SECTION 9. Section 141.001(a), Election Code, is amended to read as follows:

(a) To be eligible to be a candidate for, or elected or appointed to, a public elective office in this state, a person must:

- (1) be a United States citizen;
- (2) be 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable;
- (3) have not been determined mentally incompetent by a final judgment of a court;
- (4) have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities;
- (5) have resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding the following date;
 - (A) for a candidate whose name is to appear on a general primary election ballot, the date of the regular filing deadline for a candidate's application for a place on the ballot;
 - (B) for an independent candidate or a nonpartisan judicial candidate, the date of the regular filing deadline for a candidate's application for a place on the ballot;
 - (C) for a write-in candidate, the date of the election at which the candidate's name is written in;

- (D) for a party nominee who is nominated by any method other than by primary election, the date the nomination is made; and
- (E) for an appointee to an office, the date the appointment is made; and
- (6) satisfy any other eligibility requirements prescribed by law for the office.

SECTION 10. Section 145.003(b), Election Code, is amended to read as follows:

(b) A candidate in the general election for state and county officers may be declared ineligible before the 30th day preceding election day by:

- (1) the party officer responsible for certifying the candidate's name for placement on the general election ballot, in the case of a candidate who is a political party's nominee; or
- (2) the authority with whom the candidate's application for a place on the ballot is required to be filed, in the case of an independent candidate or a nonpartisan judicial candidate.

SECTION 11. Section 146.021, Election Code, is amended to read as follows:

Sec. 146.021. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a write-in candidate for an office that is to be voted on at the general election for state and county officers, including the nonpartisan judicial election.

SECTION 12. (a) Section 172.024(a), Election Code, is amended to read as follows:

(b) The filing fee for a candidate for nomination in the general primary election is as follows:

- (1) United States senator.....\$4,000 [\$2,000]
- (2) office [Office] elected statewide, except United States senator or justice of the Supreme Court or judge of the Court of Criminal Appeals.....3,000 [1,500]
- (3) United States representative.....2,500 [1,500]
- (4) state [State] senator.....1,000 [750]
- (5) state [State] representative.....600 [400]
- (6) member [Member], State Board of Education.....7250
- ~~(7) Chief justice or associate justice, court of appeals.....750~~
- ~~(8) District judge or judge specified by Section 52.092(d) for which this schedule does not otherwise prescribe a fee....700]~~
- (7) [~~(9)~~] judge, [Judge] statutory county court.....700
- (8) [~~(10)~~] district [District] attorney, criminal district attorney, or county attorney performing the duties of a district attorney.....1,000 [600]
- (9) [~~(11)~~] county [County] commissioner or judge, constitutional county court:
 - (A) county [County] of 200,000 or more population....1,000 [600]
 - (B) county [County] of under 200,000 population.....600 [300]
- (10) [~~(12)~~] Justice of the peace or constable:
 - (A) county [County] of 200,000 or more population.....800 [500]
 - (B) county [County] of under 200,000 population.....300 [200]
- (11) county [~~(13)~~ County] surveyor, inspector of hides and animals, or public weigher.....50
- (12) office [~~(14)~~ Office] of the county government for which this schedule does not otherwise prescribe a fee.....600 [300]

SECTION 13. The Election Code is amended by amending Section 202.002 and by adding Section 202.008 to read as follows:

Sec. 202.002. VACANCY FILLED AT GENERAL ELECTION. (a) If a vacancy occurs on or before the 65th day before the date of the general election for state and county officers, or on or before the 62nd day before the date of the general primary election in the case of a nonpartisan judicial office, held in the next-to-last even-numbered year of a term of office, the remainder of the unexpired term shall be filled at the next general election for state and county officers, as provided by this chapter.

(b) If a vacancy occurs after the 65th day before a general election day, or after the 62nd day before a general primary election day in the case of a nonpartisan judicial office, an election for the unexpired term may not be held at that general election. The appointment to fill the vacancy continues until the next succeeding general election and until a successor has been elected and has qualified for the office.

Section 202.008. FILING DEADLINE FOR APPLICATION OF NONPARTISAN JUDICIAL CANDIDATE. (a) A nonpartisan judicial candidate for an unexpired term must file the application for a place on the ballot not later than the applicable deadline for a candidate for an unexpired term in the general primary election.

(b) The filing fee or petition requirements for a candidate for an unexpired term are the same as for a candidate for a full term.

SECTION 14. TEMPORARY PROVISIONS. (a) This Act takes effect only if the constitutional amendment proposed by _____.J.R._____, 70th Legislature, Regular Session, 1987, is adopted. If the amendment is adopted, Section 2 of this Act takes effect January 1, 1988 and Sections 1,3,4,5,6,7,8,9,10,11,12, and 13 take effect January 1, 1989.

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(b) The initial members of each of the commissions created by this Act shall be appointed for terms beginning on January 1, 1989. In making the initial appointments, the Governor, Lieutenant Governor, Speaker of the House of Representatives, President of the State Bar and Chairmen of the political parties shall act together as a selection committee to ensure compliance with Chapter 281, Election Code.

(1) A term of one year shall be held by:

- (A) one person licensed to practice law appointed by the Governor,
- (B) one person not licensed to practice law appointed by the Governor,
- (C) one person licensed to practice law appointed by the Lieutenant Governor,
- (D) one person not licensed to practice law appointed by the Speaker of the House, and
- (E) one person appointed by the President of the State Bar of Texas.

(2) A term of two years shall be held by:

- (A) one person licensed to practice law appointed by the Governor,
- (B) one person not licensed to practice law appointed by the Governor,
- (C) one person licensed to practice law appointed by the Lieutenant Governor,
- (D) one person licensed to practice law appointed by the Speaker of the House, and

(E) one person appointed by the President of the State Bar of Texas.

(3) A term of three years shall be held by:

(A) one person not licensed to practice law appointed by the Lieutenant Governor,

(B) one person licensed to practice law appointed by the Speaker of the House,

(C) one person appointed by the President of the State Bar of Texas, and

(D) two persons appointed one each by the chairman of the political parties entitled to appointments under Section 281 of the Election Code.

SECTION 15. 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.

MERIT SELECTION LEGISLATIVE CONTACTS

STATE AFFAIRS

Ray Farabee, Chairman
Roy Blake, Vice Chairman
Gonzalez Barrientos
Kent Caperton
Chet Edwards
Ike Harris
Don Henderson
John Leedom
Ted Lyon
Bob McFarland
Hugh Parmer
Bill Sarpalius
Craig Washington

to write State Senators
Box 12068
Austin, TX 78711

SPONSORS:

Senators Farabee (D), Caperton (D) and McFarland (R)

JUDICIAL AFFAIRS

James Hury, Chairman
Irma Rangel, Vice Chairman
Rick Perry, CBO
Sam Hudson, Seniority Appointments
Gregory Luna, Seniority Appointments
Jim Parker, Seniority Appointments
Alan Schoolcraft, Speaker Appointments
John Smithee, Speaker Appointments
Senfronia Thompson, Speaker Appointments

to write State Representatives
Box 2910
Austin, TX 78769

SPONSORS:

Representatives Gibson (D) and Smith (D)

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TEXAS JUDICIAL SURVEY

Executive Summary

Background

Tarrance, Hill, Newport & Ryan recently conducted a survey of 600 Texas registered voters to determine their attitudes toward the Texas judiciary and judicial reform. In order to be eligible for this survey, respondents had to indicate that they had voted in "all" or "most" elections since they became eligible to vote, thus qualifying each one as a "likely voter" in any statewide referendum on judicial reform.

All interviews were conducted by telephone between January 21 and January 23, 1987. The study was directed by David B. Hill, Ph.D., Vice President of Tarrance, Hill, Newport & Ryan.

Key Findings

1. Texans strongly favor judicial reforms such as those included in "The Texas Plan" proposed by Supreme Court Chief Justice John Hill. The survey included three separate questions about the package of proposed reforms; between 72 percent and 80 percent of voters said they approve of these reforms. The third question elicited the most positive response:

"If an election were held tomorrow and you had to make a choice, which one of these alternatives would you vote for -- (ROTATE) --

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"(1) a judicial reform plan that includes
merit selection and nonpartisan elections (80%)

or

(2) sticking with the present system of
contested, partisan judicial elections" (16%)

2. When voters were asked which one of the Texas Plan's six points they like best, judicial retention elections were rated highest (by 32%), followed by merit selection (23%), and the nonpartisan feature of elections (18%). In a separate question regarding the "most needed" reform (as opposed to best liked), merit selection was cited more often (by 63%) than either election cost reduction (21%) or non-partisanship (15%).
3. Voters' support of the Texas Plan is driven mostly by two negative perceptions of the present system of judicial elections:
 - Election costs are out of hand, threatening the independence of judges from special interest campaign contributions;
 - Voters are ill-informed about judicial candidates, forcing them to fall back on partisan labels when making ballot decisions, a practice the electorate finds offensive.
4. Eighty-six percent (86%) of Texas voters said that judicial campaign costs of \$500,000 to \$1 million are "inappropriate", even though only 51% believe that much money is really being spent in judicial campaigns.

TARRANCE · HILL · NEWPORT & RYAN

5. About three-fourths of the electorate agree that too much campaign money comes from special interest groups (74%) and 77% said that election costs threaten the independence of Texas judges.
6. More than eight of ten voters (82%) said they feel personally uninformed about judicial candidates, a surprising and striking personal admission of inadequacy by poll respondents.
7. Eighty-two percent (82%) of Texas voters agreed that party labels influence voters, even though 91% told us that partisanship does not produce the best judges.
8. Voters give the present state judicial court system only fair marks overall for performance, virtually unchanged from a similar Tarrance, Hill, Newport & Ryan poll in 1980.

<u>State Courts' Performance Rating</u>	<u>1987</u>	<u>1980</u>
	<u>%</u>	<u>%</u>
Excellent	2	3
Good	33	30
Only fair	43	45
Poor	18	15
Unsure	5	7

9. State Supreme Court Chief Justice John Hill is an extremely popular political figure and well positioned to lead a court reform effort. Fifty-four percent (54%) of voters hold a favorable impression of Hill, compared with only 11% who hold an unfavorable impression. This 5:1 positive ratio is better than that measured for any statewide leader tested in the poll, including the Governor, Lieutenant Governor, and Speaker of the House.

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About the Firm

Tarrance, Hill, Newport & Ryan is a Houston-based polling firm specializing in research for politics, public affairs, media and health care. The company has a national clientele, having conducted over one million interviews in completing over 3000 separate projects since its founding ten years ago.

The study director for this project, Dr. David B. Hill, joined Tarrance, Hill, Newport & Ryan in 1985 after seven years at Texas A&M University, where he served as Director of the Public Policy Resources Laboratory and co-founded The Texas Poll.

TESTIMONY FROM DIANA CLARK, Member, Senate House Select Committee on the Judiciary

February 27, 1985

TO MEMBERS OF THE SENATE STATE AFFAIRS COMMITTEE

I am Diana Clark, from Dallas. I was appointed by the Governor to be a "public" member of the Senate-House Select Committee on the Judiciary. I am not a lawyer but I am the immediate past president of the League of Women Voters of Texas. I was assigned to the sub-committee on Judicial Selection and Related Issues chaired most ably by Senator Caperton. Other sub-committee members were Senator Glasgow, Representatives Terral Smith and Mike Toomey, Justice Joe Spurlock, II, and Max Sherman.

At two lengthy public hearings in Austin and Houston, plus a more informal meeting at the State Bar Convention in San Antonio, a variety of views were heard. While I did not keep score, my notes show that more than a majority of the speakers favored a change from the present system. It also seemed to me that views both pro and con did not fall along any perceivable party lines.

At our final mark-up session, I favored a merit selection/retention system which included district courts, but I was persuaded by Senator Caperton of the wisdom of a local option process for these courts and county courts.

Some testimony seemed to infer that the issue of the selection of the judiciary in Texas was of recent origin; due more to the fact that Texas was becoming a two-party state and more Republicans were being elected and the Democrats didn't like it. I must disagree with that inference. The League of Women Voters of Texas began a study of the judicial selection process in 1964...20 years ago...and the Constitutional Revision Commission recommended a merit system in 1972. While the Democratic Party did not officially testify before our sub-committee either in support or opposition to change, a former Democratic County Chairman did appear to support a different system than we have now. The state chairman of the Republican Party did testify in favor of a non-partisan election. The words used by his associate were "our state system could be vastly improved by getting the courts out of partisan politics". Such facts refute those who insist that this issue only took on importance after the 1980 election.

I carefully considered the information presented by those favoring non-partisan elections but my decision was that, while straight-party tickets would not have an impact, other problems with campaigning would not be eliminated.

Therefore, with the recognition that there is NO perfect solution this side of heaven, I support SJR 4 and its companion, SB 55. My reasons are these:

Judges, unlike legislators are not supposed to represent a specific constituency but are supposed to know and apply the law impartially to rich and poor, Democrat and Republican, conservative and liberal, to the beautiful and the ugly. I cannot detect any difference in decisions rendered when Republican replaces Democrat and vice versa. But what I do detect is another kind of politics -- that between lawyers...plaintiff vs. defense. I jokingly said to a group recently, that secretly, all lawyers think they should be the only ones allowed to vote for judges.

Our present system is silent on the issue of qualifications for judges. After testimony by a witness in favor of retaining our present system, I asked how the

VOTER could determine whether or not either candidate was qualified. The response: "I don't have the answer to that".

The truth of the matter is that at present there is no way to judge the qualification of a candidate for the judiciary. Party label alone is not, in my view, a reliable guide. SJR 4 would remedy the problem in a responsible way.

I have spent the best part of the last 25 years promoting political responsibility through informed voting. Imagine, if you will, a televised debate between two candidates for the Texas Supreme Court. After the moderator took the candidates through their legal past, the discussion should logically proceed to issues for the future...where each candidate stood on everything from prison or probation, water rights, civil rights, everything! How could any judicial candidate give a judicial view on any issue which might be subject to future litigation and be considered to know and apply the law impartially? If one candidate was the incumbent, would the other challenge him or her on the merits of a past decision?

The answer to both questions above is NO..the show would end and the voter would have no more information on which to make an informed choice at the ballot box than was available before the show began. Unless, of course, it is ok to decide on the basis of the color of a tie or a particular hair style.

It is a fact, that many otherwise informed voters deliberately do not vote in judicial races because they cannot make an informed decision. I have heard it said that any change in our present system would "disenfranchise" voters. Nothing could be further from the truth. The word "disfranchise" means to deprive a citizen of the right to vote; it does not mean depriving a citizen of the right not to vote. Those who might well vote for the top of the ticket are in no way disenfranchised should they choose not to vote toward the end of the ballot.

Senator Caperton's SJR 4 addresses both issues: qualifications and voter participation. Candidates selected by the Appellate Court Commission would have been evaluated according to specific criteria without regard to political affiliation and would be deemed qualified. At the retention election six years later, the judicial record would be open to public review, situations both totally opposite to present practice.

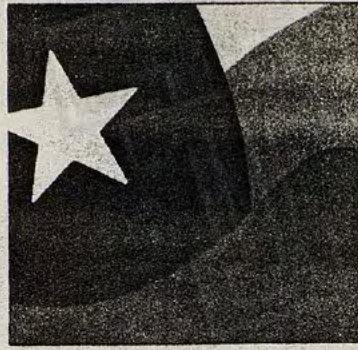
Passage of SJR 4 by the 69th Legislature will allow voters in Texas the opportunity for the first time since 1876 to have vigorous and meaningful discussion on the question of how they will choose their judges. And because of the provision for local option elections at the district levels, voters have the additional opportunity to debate and discuss the pros and cons of a change at the basic community level. This is the very best kind of public participation in government.

I have not touched on every important issue relating to a merit system. I haven't talked about campaign funds nor name identification or the refusal of highly qualified men and women to consider being a judge because of money or political identification. These factors contributed to my decision to support a merit system of judicial selection but at this point I cannot tell which issue tipped the scale.

I very strongly urge you to recommend to the full Senate that the citizens of Texas be allowed to choose the process they think best in the selection of the state judiciary.

This request also comes from the more than 4000 women and men who belong to the League of Women Voters of Texas.

Thank you for this consideration.



LA
LCA
JA
DC-
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League of Women Voters of Texas
1212 Guadalupe Suite 109 • Austin, Texas 78701 • Tel. 512/472-1100

June 19, 1984

The Honorable Kent A. Caperton
Chairman, Subcommittee on
Judicial Selection
P. O. Box 12068
Austin, Texas 78711

Dear Senator Caperton:

On behalf of the League of Women Voters of Texas I testified before your Committee on March 9, 1984. I told you of our support for a procedure of selection of judges, consisting of initial appointment by the governor from a short list of qualified candidates submitted by a nominating commission with a nonpartisan noncompetitive election for retention or rejection at the end of each term.

Members of your Committee expressed concern about the composition of the judicial nominating commission and asked that the League of Women Voters propose a plan for selection of such a nominating commission.

Questions to consider in the selection of the commission are: Who shall choose the members? On what basis? How many members should there be? How long shall they serve? Who is eligible?

The League of Women Voters believes that those who choose the members of the commission should be highly visible and accountable to the citizens of Texas. We believe that the commission should be nonpartisan and should represent the diverse elements of our population. There should not be too few members nor too many. There should be enough to be representative and enough to do the work of evaluating the candidates. There must not be so many that the cost of meeting together would be prohibitive, nor so many that it would be impossible to agree on the nominees.

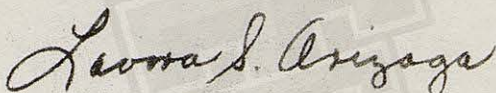
A plan for the composition of a judicial nominating committee that addresses these concerns is enclosed; it is the plan proposed by the Texas Constitutional Revision Commission in 1973. We supported that plan then and we support it now.

June 19, 1984

The League of Women Voters of Texas proposes for your consideration the following requirements for a judicial nominating commission:

1. The Judicial Nominating Commission shall be composed of eleven members, a majority of whom shall be non-lawyers.
2. The Governor, Lieutenant Governor, and Speaker of the House of Representatives, acting together as a Selection Committee, shall select the members of the Judicial Nominating Commission and designate the chairman.
3. The selection of the members of the Judicial Nominating Commission shall be on a nonpartisan basis with due regard to representation of the sexes, ethnic groups, and geographical regions of the state.
4. Members of the Commission shall serve six-year terms, and no person shall serve more than one full term. Vacancies shall be filled by the Selection Committee for the remainder of the term.
5. No member of the Commission shall hold an elective or salaried public office or state office in a political party, nor may he/she be appointed to a state judicial office during the term of appointment to the Commission.

Yours very truly,



Lavora Spradlin Arizaga
Vice President

LSA:djm

Clements and the judges

Austin A-S

AC
6/16/87

If Gov. Bill Clements wants to do something more than get in a partisan shouting match with two members of the Texas Supreme Court who have been publicly rebuked by the Commission on Judicial Conduct, he should consider opening the special legislative session to judicial reform.

Clements, who can ill afford to pass moral judgments, given his involvement in the SMU pay-for-play football scandal, nonetheless has not hesitated to ask for the resignations of Justices William Kilgarlin and C.L. Ray, in the wake of the rebukes issued them by the judicial conduct commission. Of course, the justices refused, and although there is some talk of impeachment, it may not get beyond the talking stage. That remains to be seen.

In any event, Clements is a Republican and the justices are Democrats and charges of partisan politics will be flying thick and fast if the best Clements can come up with is a de-

mand for resignation. The commission didn't think the offenses, while serious, were such as to require the men's removal from the bench. But Clements can take some positive action by opening the call of the special session to judicial reform.

The current system, which requires statewide judicial candidates to rely heavily on campaign contributions from the very lawyers who practice before their benches, practically invites corruption or the perception of corruption, which is almost as bad for the image of the bench in Texas. And at least some of the problems the two justices found themselves in involve relations with lawyers who gave them contributions.

There is an assortment of ideas for changing the system, ranging from nonpartisan elections to gubernatorial appointment to single-member judicial districts. Clements should ask the Legislature to consider them.

Rebuke of justices may help change state judicial selection

6/14/87 Austin A-5

Texas may be another step closer to an appointive judiciary, as a result of the public rebuke last week of two of Texas' nine Supreme Court justices. At a minimum, Democrats in the Legislature and elsewhere may be nervous about a situation that could endanger their entire election ticket.

The State Commission on Judicial Conduct reprimanded Justice C.L. Ray for seven violations of the state's Code of Judicial Conduct, and admonished Justice William Kilgarlin for two violations. They, like the other seven justices, are Democrats.

Ray's violations are far more serious than those of Kilgarlin — including efforts to shift two cases out of the 4th Court of Appeals for San Antonio lawyer Pat Maloney Sr., who had kicked in several thousand dollars to Ray's campaign.

Kilgarlin's two violations included failure to advise two law clerks on ethical standards for court employees. They took a trip paid for by Maloney's lawyer son.

What the commission's action does is put an official stamp on charges that had already become rather public, through hearings last year by the House Judicial Affairs Committee.

The publicity alone was not enough to cause the Legislature this year to revamp Texas' method of judicial selection, despite the personal push by Chief Justice John Hill for a switch to a Missouri system of picking judges.

Hill proposed having a 15-member commission filter judicial candidates, and submit three recommendations for a particular judgeship to the governor. The governor would select one of the three, who



State Supreme Court Justice William Kilgarlin was admonished last week.

would then be subject to confirmation by a two-thirds vote of the Senate.

At the first general election within approximately two years after the appointment, the voters would approve or disapprove the governor's choice. If disapproved, the judge would be removed and another appointed. If approved, the judge would continue to stand for re-approval every six years.

That proposal, which would remove the political party nomination and election system for judges, drew opposition both from Democrats and Republicans, including Gov. Bill Clements. For starters, if it was proposed by Democrat Hill, whom Clements beat out for governor in 1978, Clements figured it probably deserved a long, hard look.

Quite a few Democrats, knowing that most Texas judges are Democrats, don't want to see a situation where a Republican governor would name all judges.

And some Republican officials believe that they are on the verge of gaining state-



Dave McNeely

wide the same toehold they have gained in places such as Dallas County, where the judiciary is now almost entirely Republican.

Some people of both parties, such as Justice Oscar Mauzy, a former state senator from Dallas, simply believe that people who interpret the law should be elected by the people, not appointed. The fear is that having judges recommended by a select committee will result in judges chosen by and for the social and financial elite.

When Texas was a one-party Democratic state, and before the practice of law became such a potentially lucrative business, things were different. But now in the two-party days, when the pull of a political party lever may replace a good judge with a fool, a judicial candidate is forced to raise hundreds of thousands of dollars to compete.

The campaign money comes principally from lawyers and big law firms — for whom one court judgment can mean millions of dollars. Therein lies the problem.

"It's getting harder and harder to get a serious lawyer type to leave a practice to take an appointment (for a vacant judgeship), let alone run in a half million or million-dollar race," said state Sen. Ray Farabee, D-Wichita Falls. Farabee's efforts to change the judicial selection system this spring foundered. "The reality is that



The State Commission on Judicial Conduct reprimanded Texas Supreme Court Justice C.L. Ray.

you've got to be out there raising money all the time, even if you're on the bench," he said.

Thus it is that politicians increasingly are replacing hard-core lawyers on the state's benches — though some of those politicians are certainly good lawyers.

Of the nine members of the Supreme Court, three are former state senators, one is a former attorney general, and two — Ray and Kilgarlin — are former members of the Texas House of Representatives.

Clements has called on Ray and Kilgarlin to resign. Both have said they won't.

Ray issued a statement calling the commission's charges "incorrect." He has been at the bedside of a seriously ill daughter.

Kilgarlin called the charges a "crock of manure," brought by "19 lawyers who hate my guts."

As for Clements, Kilgarlin basically questioned whether the pot should attempt to call the kettle black. "Governor Clements is certainly a fine one to be discussing matters of morality and ethics in light of his involvement with paying ath-

letes when he was at Southern Methodist University," Kilgarlin said, referring to Clements' tenure as chairman of the Southern Methodist University Board of Governors.

Even though Kilgarlin's infractions are much smaller than Ray's, he has been tarred with the same brush as Ray. And it is Kilgarlin who must next face the voters, in 1988, while Ray's seat is not up until 1990.

If Kilgarlin is renominated next year by the Democrats, he may prove something of an anchor for the remainder of the Democratic ticket in the 1988 general election. Republican partisans are already licking their chops about running against Kilgarlin and other Democratic judicial candidates.

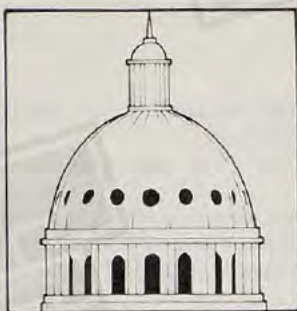
Yet in the unlikely event that Kilgarlin resigned, Clements would name his replacement. That would give the Republicans an incumbent justice piling into the 1988 election. That didn't help them in 1980, when Clements' appointee Will Garwood was unseated by Ray. But it might in 1988.

There's only a slight chance that the Democrat-dominated Legislature would try to remove Ray, and even less for Kilgarlin. But from a purely political standpoint, other Democrats on the ticket in 1988 and 1990 may begin to wonder if they might be better off without them.

The question is how soon enough legislators will share Farabee's view that the problems won't go away until money is further separated from judicial selection.

"I just think it's a very flawed system," Farabee said, "and most states have moved away from it."

(CS)



THE TEXAS JUDICIARY

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- Many highly qualified attorneys who might make excellent judges refuse to run for judicial office, or even refuse appointment to the bench, because of the necessity to become politically active in order to win or to retain the position.



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ADVOCACY PAPER

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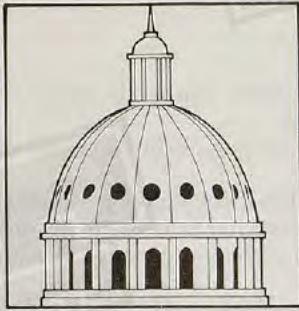
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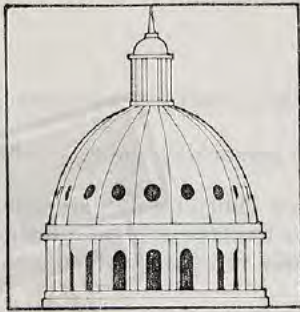
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October 12, 1986

To: Lois, Diane, State Office

From: Diana Clark *Diana*

I would have loved not to have had to revise this at all, but once the verification process started it could not be stopped!

The corrected information comes from the American Judicature
* and copyrighted
Society, dated 1985, revised, in part, 8/13/86. It would
be nice to footnote that but I don't know where the space would
come from.

I have tried to keep the word count close to what it will
replace; if it's necessary to cut, please eliminate parts that
refer to various states, I do not care which you delete.

You may phone me with questions through this coming Saturday...
after that ^{it} would require a call to Tel Aviv, London or Paris!
until Nov. 13th.

Lois: I am sorry you are having such a rough month. Good
luck on your surgery as well as the trial.

I am delighted that Evelyn and I are on the Merit Selection
Committee of 100 or so. I will miss the first meeting but Evelyn
said she would go.

* American Judicature Society
25 E. Washington, Suite 1600
Chicago, Illinois 60602

ADVOCACY PAPER- The Texas Judiciary. How to obtain the best judges substitution for material on second page, second paragraph under "METHODS WE COULD TRY" through sixth paragraph up to solid black line.

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Court Nominating Commission, a bipartisan body of lawyers, business, and civic leaders, recommends qualified candidates for vacancies on the statewide courts. Similar bodies recommend qualified candidates for vacancies on Courts of Common Pleas and Philadelphia Municipal and Traffic Courts. The governor selects his appointee from lists submitted by these panels.

Judicial Misconduct

The Judicial Inquiry and Review Board hears complaints against judges, conducts preliminary investigation of charges, and holds hearings if necessary. Complaints may be originated by anyone. With sufficient evidence of wrongdoing, the Board may recommend to the Supreme Court the suspension, removal, discipline, or compulsory retirement of a judge or district justice. The Supreme Court, in turn, reviews the Board's recommendation and may order action carried out against the justice or judge or may reject the complaint entirely.

The Board is composed of nine members. The Supreme Court elects three judges of the Courts of Common Pleas from different judicial districts and two judges of the Superior Court. The four remaining, two non-judge lawyers and two non-lawyers, are appointed by the Governor.

Judges are also subject to impeachment by the General Assembly.

Financing the Courts

All costs for statewide courts are borne by the Commonwealth. The salaries of all judges and district justices are paid by the Commonwealth, as well as allowances for other fees, including some repayment for jury costs and other court personnel.

The Courts of the Commonwealth

SUPREME COURT

10-year Term
7 Justices
Number set by
Constitution

COMMONWEALTH COURT

10-year Term
9 Judges
Number set by law

SUPERIOR COURT

10-year Term
15 Judges
Number set by law
and Constitution

COURTS OF COMMON PLEAS

10-year Term
Currently 60 districts
for 67 counties
Number of judges and divisions
for each court set by law

SPECIAL COURTS

DISTRICT JUSTICES OF THE PEACE

6-year Term
One per district

PHILADELPHIA MUNICIPAL COURT

6-year Term
Number of judges
set by law

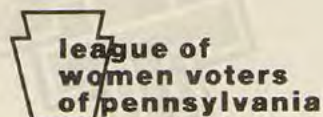
PHILADELPHIA TRAFFIC COURT

6-year Term
Number of judges
set by law

PITTSBURGH MAGISTRATES COURT

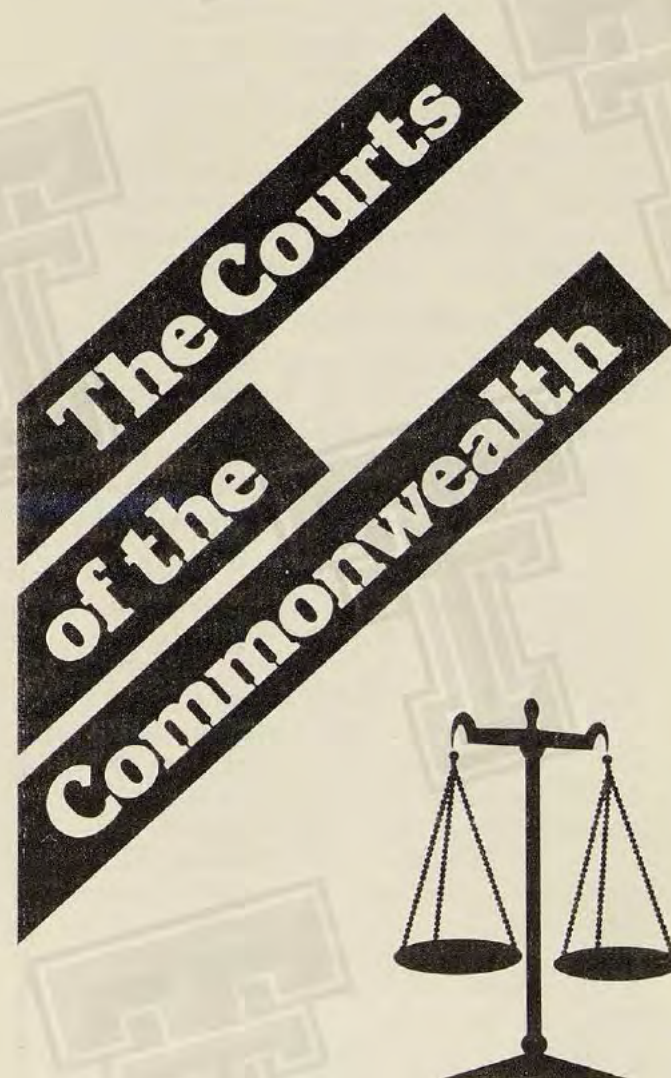
4-year term
Appointed by
Mayor

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Strawbridge & Clothier
8th & Market Streets
Philadelphia, PA 19105

#P8503
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**LEAGUE OF WOMEN VOTERS
OF PENNSYLVANIA**

Pennsylvania has had a unified court system since 1968 when the voters approved the changes to the judicial system proposed by the Constitutional Convention the previous year. All courts are under the jurisdiction of the Supreme Court, which supervises the unified system through the Court Administrator's office, keeping records, and helping to equalize loads by assigning judges where needed. The Supreme Court sets the rules of conduct governing all court personnel.

Court Jurisdiction

Jurisdiction of a court refers to the kinds of cases that a court has a right to hear. Original jurisdiction applies to a court which hears cases being brought to court for the first time. Appellate jurisdiction is the right of a court to hear appeals of rulings made in a lower court.

The **PENNSYLVANIA SUPREME COURT** is the highest judicial authority in the state. Seven justices sit on the Supreme Court, with the Chief Justice being the justice having the longest continuous service on the Court. It hears appeals from the Commonwealth Court, the Superior Court, and from the Courts of Common Pleas in cases of felonious homicide and constitutional questions. The Court may also assume original jurisdiction over "an issue of immediate public importance" that is before any other court or justice of the peace. The Court serves as administrator of the unified court system and is responsible for ensuring that the lower level courts perform their duties properly.

The **PENNSYLVANIA SUPERIOR COURT** is an intermediate appellate court established to reduce the workload of the Supreme Court. The Superior Court has 15 judges, the President Judge being the one with longest continuous service on the Court. It hears all appeals from the Courts of Common Pleas unless they have been assigned to the

Supreme or Commonwealth Courts. Such appeals include all criminal cases except those involving felonious homicide. It has some very limited original jurisdiction.

The **COMMONWEALTH COURT**, established in 1968 consists of 9 judges. The President Judge is the judge with longest continuous service on the Court. The Court hears cases specifically relating to the activities of the Commonwealth and its agencies.

The **COURT OF COMMON PLEAS** is primarily a trial court with original jurisdiction in most serious criminal and civil cases not specifically assigned to another court. Matters having to do with inheritance, divorce, and adoption are also heard in these courts. Rulings made in Common Pleas Court may be appealed to one of the higher courts.

The **SPECIAL COURTS** include district justice, municipal traffic, and magistrates courts. These courts do not use juries. District justice courts and the Philadelphia Traffic Courts are "courts of first instance" and "courts not of record." If a case from one of these courts goes to a higher court, the records do not follow. Generally, the jurisdiction of the special courts is traffic violations, landlord and tenant matters, civil action involving less than \$4000, summary offenses, and criminal cases where little or no imprisonment is involved.

Those district justices and traffic court judges who are not lawyers complete a course of instruction and pass an examination before taking office.

The Philadelphia Municipal Courts (currently 22 judges) follow somewhat different rules, and court records may follow to a higher court. Judges for these courts must be members of the bar, and may run for retention election. The Municipal Court can try criminal cases which are punishable by a term of less than five years. Otherwise the jurisdiction is the same as that of the district justice.

The six police magistrates of Pittsburgh are appointed by the mayor for 4-year terms. They are the only judiciary in Pennsylvania who are not elected. They need not be lawyers and can handle violations of minor criminal, health, and housing codes. The records of this court do not go to a higher court.

Selection of Judges

In Pennsylvania, all judges initially are elected on a partisan basis. Interim vacancies are filled by appointment by the governor. Appointees are required to run in a partisan contested election at the "next municipal election more than ten months after the vacancy occurs or for the remainder of the unexpired term whichever is less," as stated in the Pennsylvania Constitution.

The mandatory retirement age for judges is 70, although a retired judge may continue to serve in a "retired active status" in order to ease court backlogs.

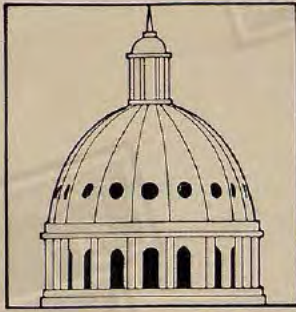
Judicial Retention

In offices where bar membership is required, an incumbent judge or justice who has already served a full term of office following partisan election may run for retention election for another term of office. Candidates appear without party designation on a separate judicial ballot or in a separate column on a voting system. Voters vote either YES or NO.

Interim Court Vacancies

The governor, with the consent of two-thirds of the Senate, has the power to appoint judges and justices to fill vacancies which occur in the courts between elections. In recent years, governors have used a voluntary merit selection plan to fill interim judicial vacancies except for those occurring in the minor judiciary.

Created by Executive Order, the Appellate



THE TEXAS JUDICIARY

ADVOCACY PAPER

HOW TO OBTAIN THE BEST JUDGES

Texans want judges that are wise and impartial, who know the law, who are completely free of all influence or control other than that of their own conscience. The desired goal of any plan for the selection of judges is an independent, well-qualified, and honorable judiciary. Is our present method of selection of district and appellate judges the best way to achieve that goal? Many believe it is not. **The League of Women Voters of Texas supports a merit-selection procedure, detailed below, which would have the best features of merit-based selection by appointment combined with control by the people through the election process.**

1. Establishment of a nonpartisan nominating commission which, whenever there is a vacancy in a district or appellate judicial office, would accept applications and recommendations, evaluate all candidates, and submit a short list of the best-qualified candidates to the governor;
2. Appointment of the judge or justice by the governor from that list for the term set by law;
3. Retention or rejection by the voters in a nonpartisan, noncompetitive election at the end of each term; and,
4. Commencement of the nominating process anew if the voters should choose not to retain the incumbent judge or justice, or if a new court is established, or if an incumbent judge should resign, die, or be removed from office.

METHODS WE HAVE TRIED

The first Texas Constitution provided that the House of Representatives and the Texas Senate jointly select all the judges except the justices of the peace, which were elected. The new Texas Constitution, adopted when Texas joined the Union in 1845, provided that the governor appoint the judges with Senate approval. In 1850 a constitutional amendment provided for the popular election of all Texas judges. After the outbreak of the Civil War the power of appointment of judges was returned to the governor, where it remained until 1876, when another constitution was adopted. The constitution of 1876 put the selection of district and appellate judges back into the hands of the voters except for interim vacancies which could be filled by the governor. This is the system that is still in effect. We say that our judges are elected, but in practice over 70 percent of all the district and appellate judges now in office were initially appointed by the governor. To remain in office, however, every judge must become a candidate for the office in a partisan election at the end of each term. The voters can send a judge home by electing another candidate. Judges may also be removed from office by the Supreme Court for misconduct or disability on recommendation from the State Commission on Judicial Conduct.

The present system of partisan competitive election of district and appellate judges has a number of serious defects.

- Judges, unlike legislators, are not supposed to represent a specific constituency. They are supposed to know and apply the law impartially, to rich and poor, to Democrat and Republican, to conservative and liberal, to the intelligent and the unintelligent, to the beautiful and the ugly.
- Judges may be elected or defeated solely on the basis of their party affiliation with no consideration for their individual merits or qualifications.
- Tremendous amounts of time and money must be spent trying to win elections, particularly when contested—and more and more judicial races are being contested.
- Many highly qualified attorneys who might make excellent judges refuse to run for judicial office, or even refuse appointment to the bench, because of the necessity to become politically active in order to win or to retain the position.



- It is distasteful, and many believe it improper, for a candidate for judicial office to solicit funds for campaigning. These funds come largely from attorneys who may practice in the court in question.
- Because of constraints of time and money, political campaigns often turn out to be personality contests rather than serious presentations of the judicial qualifications of the candidates.
- The increasing length of the ballot, especially in the lists of judicial candidates, makes it difficult if not impossible for voters to evaluate the candidates and make reasonable choices. The general electorate has little or no information on which to judge the comparative merits of the candidates—to evaluate the special skills and qualities that judges need that would not necessarily be those needed for other elective offices.
- Voter apathy, more pronounced in judicial races than in others, is intensified by the long lists of unknown candidates. Many of the voters who do choose to vote on the judicial candidates apparently rely heavily on the party label, familiar names, or the location on the ballot.

METHODS WE COULD TRY

Nonpartisan election of judges would eliminate the problem of candidates' winning or losing solely on the basis of party affiliation. It would do absolutely nothing, however, to reduce the time and money spent in running for office, or to eliminate the need to solicit funds from persons with special interests, or to ensure that the candidates would have the knowledge, skills, character, and temperament that a good judge must have. If anything, more money would be needed. Without party backing it would be harder to become known to the voters, making the candidates more reliant on campaign donations. There might be additional candidates for each judicial office, confusing the voters even more.

The idea of merit selection of judges has been around since 1913, but it was slow to be accepted. The American Bar Society endorsed a plan of merit selection in 1937, and in 1940 Missouri was the first state to adopt a merit-selection plan. Now thirty-four states have some kind of plan for merit selection of their judges. Most of these states have constitutional or statutory plans; some have voluntary plans established by executive order.

The heart of merit selection is an independent nonpartisan nominating commission. From state to state these commissions vary in size, composition, and organization. Size ranges from three members to thirty-five. In most cases membership is fairly evenly divided between lawyers and non-lawyers, although the Massachusetts and Mississippi commissions are composed entirely of lawyers. Generally members serve from one to three years. Attorney members of the Georgia commission are not appointed, but serve by virtue of their offices in the state bar association. In some states the governor appoints the chairman; in others the members of the commission elect the chairman. In New Mexico the president of the state bar association chooses all ~~twenty-two~~ members of the commission. Some states require that one or more of the members of the commission be a judge. Others require that some members be selected jointly by the leaders of the legislative bodies, while in still other states selection is by the state bar and/or the Supreme Court Justice. In some states it is by the governor.

Most states which have merit-selection procedures for appellate judges have only one nominating commission; others have more. New York has four regional eleven-member commissions and provides for commissions in each of its 57 judicial districts to nominate candidates for trial courts. Pennsylvania also uses merit selection for both trial and appellate judges, and has established five-member nominating commissions in each of its 59 judicial districts.

In 1972 the Texas Constitutional Revision Commission made recommendations for the composition of a judicial nominating commission that included an eleven-member commission, with a majority being non-lawyers. Selection was to be by the governor, lieutenant governor, and speaker of the House acting jointly on a nonpartisan basis with due regard for representation of the sexes, ethnic groups, and geographic regions of the state.

Other suggestions are that some members of a Texas commission be appointed by the governor, some by the Chief Justice of the Supreme Court, and some by the Presiding Judge of the Court of Criminal Appeals.

The time has come for Texas to change its method of selecting district and appellate judges to ensure that Texas judges will be chosen for their personal and professional attributes rather than their political acceptability, to ensure that the Texas judiciary is completely independent and impartial, and to ensure accountability to the voters. These are the results that could be achieved with the adoption of the plan recommended by the League of Women Voters of Texas—appointment by the governor from a short list submitted by an independent, nonpartisan nominating commission with a nonpartisan, noncompetitive election by the voters to retain or reject the judge at the end of each term.



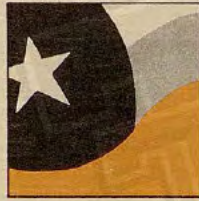
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If changes are needed, we might be able to avoid a totally new typesetting.

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League of Women Voters of Texas
1212 Guadalupe, #107 • Austin, Texas 78701 • Tel. 512/472-1100

April 8, 1987

Testimony to the House Judicial Affairs Committee on
Merit Selection of Judges (Gibson HJR 39 and HB 606)

For more than 20 years, members of the League of Women Voters of Texas have been advocating a judicial merit selection system as is before you today. We are authors of the paper "How to Select the Best Judges" which is included in your packet from the Committee for Improvement of Judicial Selection.

The League has been promoting political responsibility through informed voting for more than 60 years. Under our present system of partisan election, there is no way for voters to become informed about appropriate qualifications for judicial candidates. *Judge Jefferson's eloquence*

Therefore, the League believes that it is more than time to change, for the better, the method used to select and retain appellate and district judges.

This new system will ensure that Texas judges will be chosen for their personal and professional qualifications rather than for their political accept-

ability. *But I reiterate what others have said: This system is accountable to the people*

We very strongly urge you to recommend to the full House that the citizens of Texas be allowed to choose the process they think is best for the selection of the state judiciary.

COMMITTEE OF 100 FOR THE MERIT SELECTION OF JUDGES

FULL COMMITTEE MEETING
Friday, December 19, 1986 -- 9:00 a.m.
Marriott at the Capitol -- Austin, Texas

AGENDA

9:00 a.m. -- WELCOME AND OPENING REMARKS:
Chief Justice John L. Hill, Jr., Chairman

9:30 a.m. -- REPORTS OF REGIONAL MEETINGS:

Midland	-- Judge Barbara Culver
El Paso	-- Travis Johnson
Corpus	-- Judge Paul Nye
Fort Worth	-- Tom H. Law
Dallas	-- Judge Clarence Guittard
Houston	-- John Crooker, Jr.
Tyler	-- Judge Bill Bass
Austin	-- Judge Joe Greenhill
Lubbock	-- Dirk Murchison
Amarillo	-- Don Dean

11:00 a.m. -- REPORTS OF SUBCOMMITTEES:

Appointments to Commissions	-- Sen. Bob McFarland
Nominating Commissions	-- Sen. Ray Farabee
Local Option Choices	-- Rep. Bruce Gibson
Retention Elections	-- Rep. Terral Smith

12:00 noon -- LUNCHEON:
Chief Justice Hill Presiding

REMARKS:
Lt. Gov. Hobby
Speaker Gib Lewis

1:30 p.m. -- MEETING RECONVENES:
COMMITTEE DISCUSSION AND DECISIONS:

1. Appointment to Commissions
Senator Bob McFarland
2. Nominating Commissions
Senator Ray Farabee
3. Local Option Choices
Representative Bruce Gibson
4. Retention Elections
Representative Terral Smith
5. Alternative Suggestions and General Discussion
Chief Justice John Hill

4:00 p.m. -- ADJOURNMENT

Supreme Court
State of Utah

THE CAPITOL

SALT LAKE CITY 84114

GORDON R. HALL
CHIEF JUSTICE

December 2, 1986

John L. Hill, Jr.
Chief Justice
The Supreme Court of Texas
P.O. Box 12248
Capitol Station
Austin, Texas 78711

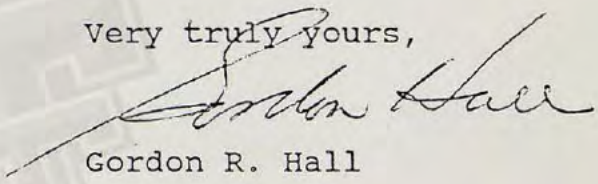
Dear John:

The Utah experience with merit selection of judges dates back to 1969 and it has proven to be a most positive experience from the standpoint of all concerned, including judges, lawyers and the general public.

While no system is infallible, and while the system we have followed is not without some detractors, it has endured remarkably well and is well-accepted as the best method of judicial selection. It has produced well-qualified judges and is viewed as a far better means of selection than either partisan or non-partisan election, or direct appointment.

Best wishes in your endeavor.

Very truly yours,


Gordon R. Hall

GRH:lwt



Supreme Court

STATE OF SOUTH DAKOTA

George W. Wuest
CHIEF JUSTICE

500 E. CAPITOL
PIERRE, S.D. 57501
(605) 773-4885

December 1, 1986

The Honorable John L. Hill, Jr.
Chief Justice
The Supreme Court of Texas
P.O. Box 12248
Capitol Station
Austin, Texas 78711

Dear Chief Justice Hill:

I would certainly recommend a merit selection of judges for Texas. We have a modified plan in South Dakota. The South Dakota Constitution was amended in 1982 to provide for a merit selection for the South Dakota Supreme Court. A qualifications commission consisting of seven members recommends two or more persons to the Governor to fill a vacancy on the South Dakota Supreme Court. The person appointed by the Governor must face a retention election every eight years which is conducted on a state-wide basis. The qualifications commission is made up of members appointed by the State Bar, the Governor and the Judicial Conference.

In the selection of circuit judges (trial courts), the selection process is different. In cases of death, disability, or resignation the qualifications commission recommends to the Governor two or more persons to fill the vacancy. However, the circuit judges do not run on a retention ballot. They have eight-year terms and any lawyer can run, whether he is recommended by the qualifications commission or not at the end of the term.

Since all of the Supreme Court Justices must be approved by the qualifications commission, in my opinion, the political hacks are eliminated. Since most circuit judges are usually appointed to fill out the unexpired term of another, because of death, disability, or resignation, the caliber of our trial judges has improved, since adoption

The Honorable John L. Hill, Jr.
December 1, 1986

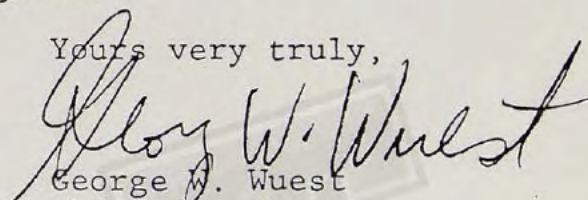
of the present plan. Occasionally, some poorly qualified candidate runs at the end of a term and wins the election over the appointed person. The latter situation is a rarity--however, it may happen.

There has been some movement to require approval by the qualifications commission before a lawyer may run for election at the end of an incumbent term, however, that requires a constitutional amendment.

If I can be of any further assistance, please advise.

My kindest personal regards.

Yours very truly,


George W. Wuest
Chief Justice

GWW:mk



SUPREME COURT OF HAWAII

ALIOLANI HALE

P. O. BOX 2560

HONOLULU, HAWAII 96804

CHAMBERS OF
HERMAN LUM
CHIEF JUSTICE

December 2, 1986

The Honorable John L. Hill, Jr.
Chief Justice
The Supreme Court of Texas
P. O. Box 12248
Capitol Station
Austin, Texas 78711

Dear Chief Justice Hill:

In response to your inquiry concerning our merit selection plan, I am happy to share with you some of my personal thoughts.

Our Judicial Selection Commission is made up of nine individuals -- five of whom are lay people and the others are lawyers -- two each selected by the Governor and the Chief Justice, one each selected by the President of the Senate and Speaker of the House, and the remaining three elected by the Bar. Each serves for three years.

The Commission screens all applicants and recommends six names for each vacancy to the Governor or Chief Justice depending on the vacancy for, you see, under our laws, the Governor appoints vacancies to the Supreme Court, the Intermediate Court of Appeals and the Circuit Court (court of general jurisdiction), and the Chief Justice appoints vacancies to the District Court (court of limited jurisdiction) and the Family Court.

The Governor's appointments are subject to Senate confirmation, whereas, mine are not. The Commission is free to encourage and solicit other Bar members to apply when the quantity and quality of applicants fall below expectation.

Before our merit plan was adopted, our Governor made the appointments and the Senate confirmed. Under the old system, we found more politicians appointed to office, many of whom had little or no legal practice experience because of their devotion to politics. This led to a fair number of criticism. We suffered from backlog problems and many others.

The Honorable John L. Hill, Jr. -2-

December 2, 1986

Today, few politicians are being appointed; the appointments predominantly come from the practicing Bar. I can honestly say that we now have a better caliber of judges, which is reflected by the fact that we no longer have a backlog problem and our courts are now current in their work.

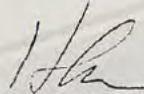
Our Judicial Selection Commission is given the sole power to retain judges. At the end of a judge's term, he must apply for retention through the Commission. On a number of occasions, the Commission has refused to retain, the net result of which has given a perception to the public that the Commission is truly independent and not a rubber-stamp organization. This has totally enhanced the public's confidence in the system.

It's my opinion that our system has public support and will endure, although from time to time there are those who advocate that we have retention by public ballot.

Before closing, let me say that one of the most important factors in getting good judges is good salaries. Our recent legislature increased judges' salaries dramatically, due in part to the quality of work of our judges. It's my opinion that with a better schedule of salaries for judges, we will attract an even better quality of applicants to serve on the Bench.

I hope the above is of help to you.

Sincerely,


HERMAN LUM
Chief Justice



SUPREME COURT OF FLORIDA
TALLAHASSEE
32301-8167

PARKER LEE McDONALD
CHIEF JUSTICE
JAMES C. ADKINS
JOSEPH A. BOYD, JR.
BEN F. OVERTON
RAYMOND EHRLICH
LEANDER J. SHAW, JR.
ROSEMARY BARKETT
JUSTICES

December 1, 1986

SID J. WHITE
CLERK
TONY SMILGIN
MARSHAL

The Honorable John L. Hill, Jr.
Chief Justice
The Supreme Court of Texas
Post Office Box 12248
Capitol Station
Austin, Texas 78711

Dear Justice Hill:

I have your letter of November 26th in which you solicit my comments on the process of merit selection and retention of judges.

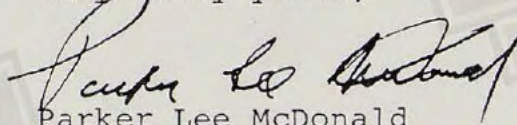
As you know, in Florida we have appointment-retention of appellate judges, but elect our two tiers of trial judges in a nonpartisan election. I favor the appointment-merit retention for all judges and I believe that is the growing view of Florida's citizens when both systems are compared side by side. The strongest argument for appointment-retention is the substantially larger number of persons who make themselves available for appointment, but decline to run. The requirement of review by a retention election tends to satisfy, in part at least, the fear that an inept, incompetent, lazy, autocratic, or dishonest judge may be permanent.

There are many who do not understand the merit retention election process. Many feel that this enables the news media to have too great an influence on a merit retention vote. But I have heard few who believe it is proper for judges to have big expensive elections.

As for the judges' views, most like the way they originally got on the bench. If elected, election is touted; if appointed, appointment is urged.

I see no move to change our process of appellate appointment-selection. I would guess that, at the moment, we in Florida are about equally divided as to whether the system of electing our trial judges should be changed.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Parker Lee McDonald", written in a cursive style.

Parker Lee McDonald
Chief Justice

PLMcD/cm



RICHARD M. GIVAN
CHIEF JUSTICE OF THE STATE

STATE OF INDIANA
OFFICE OF THE CHIEF JUSTICE
INDIANAPOLIS

December 3, 1986

SUPREME COURT
ROOM 324
STATE CAPITOL
232-2544
AREA CODE 317

The Honorable John L. Hill, Jr.
Chief Justice
The Supreme Court of Texas
P.O. Box 12248
Capitol Station
Austin, Texas 78711

Dear Chief Justice Hill:

I have your letter of November 26 inquiring as to my opinion on the functioning of the Merit Selection System for the Judges in Indiana. The merit system in Indiana is in place for the Court of Appeals and the Supreme Court and in modified forms in our five most populous counties as far as trial judges are concerned. The rest of the state remains under the political system.

Our present system came into being via constitutional amendment in 1972. Prior to that time all courts in Indiana, including the Supreme Court, were purely on a partisan political basis. I came into the Supreme Court under that political system in 1969. In 1967 I had been a member of the Indiana Legislature when the constitutional amendment passed for the first time. Indiana law requires a constitutional amendment to pass two successive legislatures and then be submitted to the public.

Before I knew that I would be a candidate for election to the Supreme Court, I strongly supported the constitutional amendment and continue to do so. Under the political system, judges were beholden to the various leaders of their particular political party and had to bear that in mind during their entire tenure in office if they intended to submit their names to a political convention for renomination. The present system of course relieves the judge from this burden.

In addition, I think the present system ensures more highly qualified persons in that the screening by the Judicial Nominating Commission is very thorough. At the culmination of this screening, the Commission submits three names to the Governor. The Governor is required to make an appointment from those three names within sixty days. He is not permitted to return the names to the Commission or

The Honorable John L. Hill, Jr.
December 3, 1986
Page Two

substitute any names. If he fails to make such an appointment within the sixty-day period, the Chief Justice makes the appointment. Of course there is a certain amount of politics involved so far as the Governor's appointment is concerned; however, his political activity is strictly limited to the three names submitted to him.

For twelve years now I have served as Chairman of the Judicial Nominating Commission by virtue of being Chief Justice. It is my considered opinion that the present method is far superior to our old political system. Incidentally, it has never become necessary for the Chief Justice to make the appointment. The Governor has acted in every instance within the time specified.

As in all other phases of human endeavor, this system has its detractors. In fact, at almost every session of the legislature since 1972, someone has introduced a bill to return the choosing of judges to the old political system. Every time that has occurred the Bar Association, the League of Women Voters and various other organizations within the state have strongly opposed such a move and the bills have failed to pass. What the general public would do if they were given the opportunity to vote on an amendment which would abolish the present system is pure speculation; however, it is my opinion such an attempt would fail.

I would point out that several judges on the Court of Appeals and on the Supreme Court have come up for the retention vote which is required two years after appointment by the Governor and is repeated every ten years thereafter. To date no judge has been defeated by the retention vote. It would thus appear the general public is at least satisfied with the judges who are serving on both courts.

I would point out that on two occasions at the trial level in counties using similar systems judges have been defeated but justly so because of their conduct.

I should mention that, although the method of choosing the judges at present is good, I think the most important thing in our constitutional amendment is the setting up of the Judicial Qualifications Commission. This is the same group of people who constitute the Judicial Nominating Commission. They receive complaints concerning judges throughout the state, including the

The Honorable John L. Hill, Jr.
December 3, 1986
Page Three

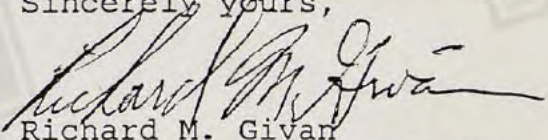
Court of Appeals and the Supreme Court and conduct investigations into those complaints. They then have the ability to make recommendation to the Supreme Court that a judge either be removed or disciplined.

During the period of time this process has been in place, ten trial judges throughout the state have received notices from the Commission that a formal hearing would be conducted concerning their competence to sit. In each of the ten instances, the judges have tendered their resignations. I think this has a great deal to do with the thoroughness of the investigation and the fact the Commission lays the facts before the judge in telling him exactly what will be presented against him at his hearing. When the judge receives this information, he wisely determines to resign rather than to go through the public hearing.

It is my personal conclusion that regardless of the method used in choosing judges, it is much more important to have an effective method of getting rid of judges who are not performing properly. This Indiana is able to do very effectively.

I believe the constitutional amendment has greatly improved the Indiana judiciary both at the trial level and at the appellate level. I would highly recommend some form of this system to any state.

Sincerely yours,


Richard M. Givan
Chief Justice of Indiana

RMG/ja



Supreme Court

STATE CAPITOL
DES MOINES, IOWA 50319

W. WARD REYNOLDSON
CHIEF JUSTICE

December 4, 1986

Honorable John L. Hill, Jr.
Chief Justice, Supreme Court
of Texas
P.O. Box 12248
Capitol Station
Austin, Texas 78711

Dear John:

Thank you for your November 26 letter.

In my opinion, the merit selection plan in Iowa has produced more qualified judges and is a better system than any other plan of which I am aware. We have been fortunate in obtaining a number of judges who are very excellent lawyers who would not have been in the least interested in the bench under a system like yours, or that which prevails in other states where there is a necessity to raise funds and launch out on the campaign trail.

Further, I think Iowans generally are satisfied with our merit selection system. Of course, there is some grumbling from time to time that people would know more about the judges if they were required to campaign as the persons in the other two branches of government do. I am sure you agree, however, that a judge cannot--and should not--make campaign promises to do more than follow his or her oath of office, which is to follow the law and the state and federal constitutions.

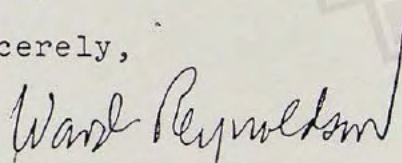
While an exception may always come along, we have had but one minor scandal (a sexual adventure) among our district and supreme court judges during the fifteen years I have served on this bench. That speaks well, I think, for the quality of lawyers we have been able to obtain by giving them limited tenure and freeing them from the political pressures that have been prevalent in your state. I doubt that the thinking public and

Honorable John L. Hill, Jr.
Page 2
December 4, 1986

the news media would ever tolerate a serious attempt to return us
to another type of judicial selection.

With warm personal regards, I am,

Sincerely,

A handwritten signature in dark ink, appearing to read "Ward Reynoldson". The signature is fluid and cursive, with a long, sweeping line extending from the end of the name.

W. Ward Reynoldson

WWR/nr

SUPREME COURT OF DELAWARE

ANDREW G. T. MOORE, II
JUSTICE

December 5, 1986

THE ELBERT N. CARVEL
DELAWARE STATE BUILDING
WILMINGTON, DELAWARE 19801

The Honorable John L. Hill, Jr.
Chief Justice
The Supreme Court of Texas
Capitol Station
P.O. Box 12248
Austin, Texas 78711

Dear Chief Justice Hill:

Your November 26, 1986 letter to Chief Justice Christie has been referred to me for reply. However, he sends you his warmest regards. Since you have obtained fairly detailed information on Delaware's judicial merit selection system, it is unnecessary for me to describe it, except to note that it contains careful checks and balances — and proven advantages. However, you have asked for an opinion respecting the quality of judges produced and whether the process is a better system for the selection of judges than either a partisan or non-partisan election, or direct appointment by the Governor. You have also asked whether the citizens of Delaware are satisfied with the merit selection system or would they prefer a different method of selecting judges. By these inquiries I trust that you expect me to speak bluntly and candidly. Naturally, each State and its citizens must be the judges of their own system, and I totally respect their informed decisions in that regard. Thus, my comments are intended to be constructive and offered in the spirit in which I believe they have been sought.

Before my appointment to the Supreme Court I served as a member and officer of the Delaware Judicial Nominating Commission, and am quite familiar with various methods of judicial selection. Moreover, I have carefully studied the problems inherent in a system of elected judges. In the course of this study I have discussed these matters with leaders of the American Judicature Society, including non-lawyers, and responsible members of the Bar throughout the country, including those in Austin, Dallas, Houston and San Antonio. In no case, and with all due respect to the many fine judges of the Texas judiciary, have I heard positive support for an elective system of the Texas type.

The citizens of Delaware are well informed and demand the highest standards from their officials at all levels and in all branches of government. One accepts public office in Delaware with those guiding precepts. There is no serious indication that our citizens would vote for an elective system with the grave problems it invites. First, elected judges have to raise campaign funds. Second, to secure election, or reelection, this invariably means that a judge must ask lawyers for money, and all that implies. The evils of that system are matters of current news here. In nearby Philadelphia, two trial judges are under indictment for allegedly receiving funds, which it is claimed were not campaign contributions, although delivered under that pretext. Whatever the merits of those cases, and their eventual outcome, they arise from a system that requires judges to seek and deal in money from others in order to retain their judicial office. It is the

latter circumstance which so thoroughly impugns public respect for and confidence in the judiciary.

On a recent visit to Texas I was advised by members of the legal community that a Texas judge may retain excess campaign contributions, as personal funds, provided he or she pays the necessary income taxes on them. Moreover, I understand that in Texas a judge is not disqualified from hearing a case merely because a lawyer for one of the parties made substantial contributions to the judge's election campaign. See Rocha v. Ahmed, 662 SW2d 77, 78 (Tex. App. — San Antonio 1983, no writ); River Road Neighborhood Association v. South Texas Sports, Inc., 673 SW2d 952 (Tex. App. — San Antonio 1984, no writ); Committee on Judicial Ethics Opinion, Number 48 (1979).

Wholly apart from the coercive aspect of judges asking lawyers for money, there is a concomitant evil. In my discussions with leaders of the Bar throughout the country and with enlightened members of the Judiciary, including elected judges, they express concern that one of the principal evils of the elective system is that many lawyers and groups who make substantial campaign contributions seek to convey the impression that they have one or more judges beholden to them. Whatever the reality, and with no disrespect to the many honest and dedicated judges who consider themselves trapped in an elective system, this presents several serious problems under the Code of Judicial Conduct. First, it adversely reflects on the integrity and independence of the judiciary (Canon 1), second it creates the appearance of impropriety and permits others to convey the impression that they are in a special

position to influence a judge (Canon 2), and third it creates the impression that a judge cannot perform the duties of his or her office impartially (Canon 3). In short it undermines public respect for the institution of the judiciary.

In my opinion the people of Delaware would not accept a system of judicial selection with such evils. The Delaware citizens and the form of government they have chosen, including the merit selection of judges, reflect the sense of responsibility and objectives of good government which this State demands of its officials. The result with few exceptions has been a judiciary of nationally recognized distinction. This has reflected well on Delaware and permits it to retain its national preeminence as a leader in corporate and business affairs. The resulting benefits to the State have been substantial. I do not believe that our citizens would risk these proven advantages for any other system of judicial selection.

Very truly yours,

Andrew G. Rose III

AGTM:cw

The Chief Judge of the State of New York



Sol Wachtler

December 3, 1986

Hon. John L. Hill, Jr.
Chief Justice, The Supreme
Court of Texas
P. O. Box 12248
Capitol Station
Austin, Texas 78711

Dear John:

Reference is made to your letter of November 26.

I first went to the New York State Court of Appeals through the election route. In 1979 our State Constitution was amended to provide that judges for our Court were to be appointed by the Governor from a list submitted to him by the State Commission on Judicial Nomination. That Commission consists of twelve members: four appointed by the Governor; four by the Chief Judge of the Court of Appeals; and four by the various legislative leaders. The Commission is constituted in such a way as to prevent either lawyers or any one political party from having a majority of members. I am enclosing the sections of our Judiciary Law which implements the constitutional amendment.

The advent of television, and what some characterize as "unseemly judicial campaigns" for election to our highest court, was the catalyst for this judicial reform. At the risk of being accused of making a self-serving statement, I believe the system has worked extremely well. As of January 1, 1987, our entire Court would have been appointed through the merit screening process.

Although our Governor is a Democrat, he has been responsible for appointing at least three Republicans to our seven member bench. In addition, we have our first woman and first black in our Court's two hundred

year history. Both of these superior jurists were elevated as a result of our appointed process.

Despite this, the public is not likely to support a change in our method of selecting our trial judges. The political leadership in this State has done an effective job in convincing the public that they should have a voice in selecting their judges through the elective process. As a practical matter, it is the political leaders through the granting of various nominations who control the judicial selection. Nevertheless, the polls tell us that the public would be most reluctant to change the process.

I hope that this information will be of some assistance to you.

Warmest personal regards,

Sol Wachtler

SW/ys

Enc.



JOHN L. HILL, JR.
CHIEF JUSTICE
THE SUPREME COURT OF TEXAS

P.O. Box 12248
CAPITOL STATION
AUSTIN, TEXAS 78711

(512) 463-1316

October 13, 1986

TO MEMBERS OF THE COMMITTEE OF 100
FOR MERIT SELECTION OF JUDGES:

Enclosed is a copy of a letter of July 14, 1986 from Lieutenant Governor W. P. Hobby and Speaker Gibson "Gib" Lewis to me requesting that I chair a committee to study the merit selection method of choosing judges in Texas. I have accepted and Governor Hobby and Speaker Lewis have agreed to serve as Vice-Chairs.

Will you please join with us as a member of this important committee. We will hold a first meeting on Saturday, October 25, at 9:00 A.M. at the Capitol Marriott Hotel downtown, 701 E. 11th Street, Austin, Texas.

Thank you very much for your willingness to participate in this most significant effort and we look forward to seeing you on the 25th here in Austin at the Marriott.

It is urgent that we get to work as early as possible so that we can have our report ready by January, 1987.

Sincerely,

John Hill
John L. Hill, Jr.
Chief Justice

DEMYSTIFYING COMPARABLE WORTH

By Dr. Paula England

The issue of "comparable worth" or "pay equity" refers to a kind of sex discrimination that went unrecognized until about 10 years ago. Let me mention three different kinds of sex discrimination that might occur in employment to distinguish which one comparable worth refers to. One kind of sex discrimination involves access to jobs; a person can't get hired or promoted into a particular job because of her or his sex. A second kind of discrimination is lack of equal pay for equal work in the same job. A third kind of discrimination is the type most at issue in comparable worth. This occurs when an employer takes the sex of the people doing a job into account in deciding its pay. When this occurs, jobs filled by females pay less in relation to the amount of skill, education, effort, and onerous working conditions that they require than do "male" jobs.

Before talking more about comparable worth, let me provide an overview of the situation of employed women in the U.S. today. In doing this I will present explanations of job segregation and the sex gap in pay that draw on research by economists, sociologists, and psychologists. Often debates on sex discrimination present an extreme "black or white" view in which some think the jobs and pay women have are explained entirely by women's free choices, while others think that every bit of the segregation and pay gap is because employers discriminate against women. The truth lies somewhere in the middle.

Many jobs are filled mainly by women or mainly by men. The amount of such sex segregation of jobs decreased only slightly before 1970, but has decreased substantially since 1970. This has come mainly from women entering traditionally male fields in management and the professions. There has been a smaller movement of women into traditionally male blue-collar fields, and of men into "female" jobs. Yet jobs are still substantially segregated by sex.

What explains this segregation? A number of economists argue that differences in the "human capital"—education and experience—of men and women explain why jobs are segregated by sex. I disagree. I think that human capital has little to do with segregation (though, as I'll explain later, it does account for some share of the sex gap in pay). Contrary to what many people think, men and women in the U.S. labor force have, on average, the same number of years of schooling, 12.7. What about job experience? It is indisputably true that women in the labor force average less years of experience than men. However, this is not a major cause of job segregation by sex. If segregation arose because of differences in the years of job experience between men and women, then entry level jobs would be integrated by sex, and jobs further up the organizational ladders that require years of previous experience would have few women. You do see this on some job ladders, but what is more striking is how often even *entry level* jobs are segregated by sex. Sex differences in experience can't explain this segregation of entry level jobs.

To understand segregation, we need to look at a more social-psychological factor. To the extent that the segregation of jobs is explained on what economists call the "supply side", it comes from sex role socialization. Socialization refers to the process whereby girls grow up thinking they're supposed to be nurses or secretaries, while boys grow up thinking they're supposed to be construction workers or bank presidents. They get these ideas from their

parents, from television, and from looking at what they see the adults doing in the world around them.

Another factor affecting job segregation is sex discrimination by employers in hiring, placement, or promotion. This kind of discrimination is much less prevalent than it was 15 years ago, but studies by industrial psychologists still show that many managers prefer males for high level jobs.

Turning to the sex gap in pay, if we look at median earnings of full-time year-round workers (and adjust for differences in the number of hours worked by people called full-time), women earn 67 to 70 percent what men earn. It is a large gap. Studies suggest that somewhere in the range of 25 to 45 percent of the sex gap in pay is explained by sex differences in years of experience and plans for future employment experience. So what economists call "human capital" does explain a part of the sex gap in pay.

The most proximate cause of much of the pay gap is segregation; women are concentrated in lower-paying jobs. As I said earlier, this segregation derives partly from discrimination and partly from sex role socialization. But once people are in rather segregated jobs, the third kind of discrimination I've spoken of comes in. This is the wage discrimination at issue in "comparable worth". We live in a culture that is male dominated and tends to deprecate tasks traditionally done by women. The jobs that females do often get assigned pay levels that aren't commensurate with what those jobs are really contributing to the firm or organization. When a job pays less than it otherwise would simply because it is women who do the work, this is wage discrimination. What is the evidence that this sex-based wage discrimination exists? One kind of evidence is the fact that some employers openly admit that they pay certain jobs less simply because they're filled by women. One federal court case unearthed an interoffice memo to this effect, a "smoking-gun" proof of discrimination.

Other evidence comes from two types of statistical studies that each suggest a systematic tendency of employers to pay "female" jobs less than you would predict the jobs to be paid based on their demands. One type of statistical study is called an a priori job evaluation. Here an employer generally hires a consultant who meets with some of the firm's managers to evaluate all the jobs in the firm. They start with detailed job descriptions. They also decide what factors involved in jobs are things the firm needs to compensate for, such as skill, education, responsibility, unpleasant working conditions, etc. Then they decide how heavily each factor is weighted relative to the others. Finally, each job is given points for each factor and the total points for each job are added up.

If you draw a scatterplot of job points against actual salaries, the resultant points scatter around a line such that the jobs with the higher points generally pay more. But such studies usually find that the predominantly female jobs cluster below the line while the predominantly male jobs cluster above the line. So, for any given number of points, a "female" job usually pays less than a comparable "male" job.

Another type of statistical approach to comparable worth is called a "policy-capturing" analysis. Here too jobs are evaluated on several factors. But these studies differ from a priori approaches in that the weights (the relative importance of factors like skill, responsibility, and working conditions) are determined empirically through the statistical analysis. So the analysis "captures" the relative importance of various factors used by the employer in their actual pay

decisions. Market factors will affect these weights. These policy-capturing studies come up with a similar result: "female" jobs generally pay less than "male" jobs with the same points, even accepting the employer's and market's weighting of factors.

These two kinds of studies provide evidence that there is a systematic tendency for employers to pay "female" jobs less in relationship to job characteristics than they pay "male" jobs. Advocates of comparable worth view this as evidence of discrimination. It is important to understand that these kinds of analyses are not claiming that anytime a "female" job pays less than a "male" job we have discrimination. For example, they would not suggest that the fact that (mostly male) lawyers earn more than (mostly female) secretaries is discriminatory; these jobs differ greatly in skill levels. These are much more refined analyses that ascertain whether characteristics of jobs are rewarded to the same extent when they are present in "female" jobs as when they are done in "male" jobs. In most employment settings the answer is no.

What policies do advocates of comparable worth propose to deal with this type of discrimination? Three things are proposed. The first is simply that Title VII of the Civil Rights Act of 1964 be interpreted to prohibit the kind of wage discrimination against "female" jobs these studies have uncovered. Title VII contains very broad language forbidding sex discrimination in *any of the terms of employment*. In its 1981 Gunther decision, the U.S. Supreme Court opened the door to comparable worth by saying that if plaintiffs show that one job paid less than another because of intentional sex discrimination, they have shown a violation of Title VII. The current dispute about the applicability of Title VII to comparable worth is over what evidence plaintiffs have to present to convince the court that there was wage discrimination against "female" jobs in cases where there isn't a "smoking gun" but rather statistical evidence. Advocates of comparable worth believe that the EEOC should bring cases involving this kind of sex discrimination to court and push for interpretations that do not require a direct, "smoking gun" proof of intent, but allow statistical proofs. Such proofs are allowed in cases of hiring discrimination. Further, advocates think that both the EEOC and the U.S. Commission on Civil Rights should speak out against this form of discrimination and in favor of the notion of comparable worth. Under the Reagan administration, this is not being done.

Secondly, advocates of comparable worth suggest that when governmental units are themselves the employers they should perform job evaluation studies and remedy any inequities that are found between the pay of comparable "male" and "female" jobs. A number of states have done or are in the process of doing this, though Texas is not among them. Legislation to do such a study for the U.S. Civil Service has been proposed but not yet passed.

Finally, proponents of comparable worth would like to see the public better educated about this issue. This should lead to harder wage bargaining by women (as they notice, for example, that as secretaries they are paid less than janitors). It may also lead to voluntary action by employers to raise the pay of "female" jobs if their analyses show this to be warranted. A few large corporations are doing this voluntarily as part of their EEO policies.

Let me address some of the arguments commonly given against comparable worth. One often hears that comparable worth is a frontal assault on the market system, and that it would involve Russian style "commissars" in governmental agencies deciding exactly how much can be paid in every occupation in the nation. This is not at all what advocates of comparable

worth seek. The idea is that each employer would do its own job evaluation in a way that fits the firm. Advocates also suggest that if plaintiffs can convince a judge that a firm's system of setting inter-job wage differences is taking sex into account, they should win law suits under Title VII. So, in this sense, the courts would get involved just as they do now in cases of hiring discrimination or lack of equal pay for equal work. All anti-discrimination legislation is governmental intervention into the market system. It's an intervention into the market system to require equal pay for equal work and to require that race and sex not be used in hiring discrimination. The question is not whether we want any governmental regulation, but on what issues do we think that regulation is sensible and necessary. I believe that the sex-based wage discrimination at issue in comparable worth is one of them.

Another common argument against comparable worth is that we should provide opportunities for women to move into higher paying "male" jobs rather than raise the pay of "female" jobs. Either strategy will raise women's wages relative to men's. But these are not mutually exclusive solutions. I am completely in favor of women having access to traditionally male occupations. But I also believe that if a woman is in a "female" job—whether she got there by choice or hiring discrimination—it makes no sense to say she has to leave that occupation in order to get a wage that isn't set by sex discrimination.

Most simply, the case for comparable worth is this: When we decided as a nation to make race and sex in employment discrimination illegal, the decision was a broad one. Title VII said that neither race nor sex can be taken into account in any employment decisions. By any sensible interpretation, this means that sex may not affect who an employer decides to hire or promote, that sex may not affect the setting of individuals' wages within jobs, *and* that sex may not affect the relative wage of two jobs. This last type of discrimination is what animates the drive to achieve pay equity for jobs of comparable worth.

This is a shortened version of a speech given by Dr. Paula England to the Texas Women's Alliance in March 1986, Austin, Texas.