

JUDICIAL SELECTION REFORM: EXAMPLES FROM SIX STATES

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Campaign Finance Reform in Texas

“Expensive judicial races, even if only a symptom of a deeper problem, are not likely to fade from the judicial landscape without broad, serious campaign finance reform.”¹

Until the late 1970s, judicial elections in Texas were unremarkable events. Democrats dominated the state’s judiciary to such an extent that the only notable judicial elections occurred during the Democratic primary. Even these races rarely inspired much notice because most judges resigned before the end of their terms, allowing governors to appoint their successors who then easily won re-election. As Anthony Champagne and Kyle Cheek note, “This arrangement was so common in the first 100 years of the 1876 constitution that one study concluded that the Texas judicial selection system was primarily appointive.”²

Although few could have predicted it at the time, the 1976 supreme court election of Don Yarbrough, a political unknown who had numerous ethical complaints in his background,³ marked the advent of an era of increasingly expensive and noisy judicial elections in Texas. Yarbrough, who shared the name of a long-time Texas senator, defeated a well-respected incumbent. A similar situation

unfolded in 1978, when a little-known plaintiff lawyer named Robert Campbell was elected to the supreme court. Campbell’s cause was helped by the fact that University of Texas running back Earl Campbell had won the Heisman Trophy the previous fall.⁴

The year 1978 was also a notable one in Texas politics because William P. Clements was elected governor—the first Republican to hold the position since Reconstruction. As a result of Clements’s election, it would be a Republican governor who filled interim vacancies on the courts. Plaintiff lawyers, who thought Democratic judges were more sympathetic to their positions, became concerned.

In the early 1980s, the examples of Yarbrough and Campbell and the concern that an increasingly Republican state would have an increasingly Republican judiciary motivated plaintiff lawyers to seek ways to create the sort of name recognition that had propelled Yarbrough and Campbell to the supreme court. As one study of judicial selection in Texas points out, “name recognition might occur naturally, as with Yarbrough, but it can also be bought.”⁵ Expensive campaigns provided the name familiarity that plaintiff lawyers desired.

As plaintiff attorneys became more active in supporting judicial candidates, business interests began to see the value of backing their own candidates. Enormous population growth during the same period increased the number of judicial offices in the state and reduced candidates’ opportunities to reach voters through

1. Anthony Champagne and Kyle Cheek, *The Cycle of Judicial Elections: Texas as a Case Study*, 29 *FORDHAM URB. L.J.* 907, 938 (2002).

2. *Id.* at 910.

3. Yarbrough had faced disbarment proceedings in which a total of 73 violations were alleged. Although he was not criminally indicted when tape-recorded evidence was discovered of his plans to murder and mutilate his enemies, he was later indicted for perjury in reference to a forged automobile title. He eventually resigned from the court and gave up his law license. *Id.* at footnote 24.

4. *Id.* at footnote 25.

5. *Id.* at 911.

old-fashioned avenues like fairs and speeches to civic groups. In Texas, as in several other states during the last quarter century, expensive campaigns of mass mailings, yard signs, and television spots became typical.⁶

As elections in Texas became more expensive, there was an increased focus on the players behind the scenes who paid for pricey campaigns. More than in any other state, the perception developed in Texas that there was a direct connection between campaign contributions to judicial candidates and the decisions that those candidates later made as judges. Because of the perception that justice was for sale, and because a drawn-out Voting Rights Act dispute precluded any meaningful selection reform efforts in the late 1980s and early 1990s, Texas turned to campaign finance reform. In 1995, after a decade and a half of judicial elections so expensive that they attracted extensive national media attention, the Texas legislature enacted the Judicial Campaign Fairness Act, which imposed mandatory contribution limits and voluntary expenditure limits for judicial campaigns.

CAMPAIGN FINANCE REFORM IN THEORY AND IN PRACTICE

In most states, the same campaign financing provisions apply to both judicial candidates and candidates for other offices.⁷ In Texas, contributions from corporations and labor unions are prohibited, but prior to 1995, there were no limits on the amount that individuals and PACs could contribute to candidates for elective office. The Judicial Campaign Fairness Act (JCFA) set limits on contributions to judicial candidates from individuals, law firms, and PACs, and proposed voluntary expenditure limits.

Of the states that hold some form of election for judicial office, fifteen impose no limits on the amount of money that candidates may accept from individuals and PACs. Two states have individual contribution limits of \$10,000, eleven states have limits between \$1001 and

\$5000, and ten states limit donations to \$1000 or less.⁸

Since the early 1980s, the cost of running for judicial office has risen dramatically. Judicial campaign financing levels reached record highs in many states in the 2000 elections. Supreme court candidates in Alabama raised more than \$13 million, and, in Illinois, candidates raised more than \$8 million.⁹ In Michigan, candidates, political parties, and interest groups spent a total of \$13 to \$15 million.¹⁰ Judicial candidates around the nation raised more than \$45.6 million in 2000, a 61 percent increase from 1998.¹¹

Although judicial elections were less costly in 2002, there is a growing concern that judicial elections as expensive as races for other offices will become the norm rather than the exception. One response has been to establish special campaign financing regulations for judicial elections, as the Texas legislature did with the Judicial Campaign Fairness Act. The Ohio Supreme Court chose this route as well. In 1995, the court set contribution and expenditure limits for judicial races. However, the constitutionality of spending limits was challenged by two Ohio judges in *Suster v. Marshall*. The federal district court ruled that spending limits violated the First Amendment,¹² and the court of appeals agreed.¹³ The spending limits were repealed in 2001.

Campaign financing regulations must conform to the U.S. Supreme Court's decision in *Buckley v. Valeo*.¹⁴ According to the Court, cam-

6. *Id.* at 909-917.

7. See <[http://www.fec.gov/pages/cflaw2000 .htm](http://www.fec.gov/pages/cflaw2000.htm)> for information on campaign finance laws nationwide.

8. Deborah Goldberg, PUBLIC FUNDING OF JUDICIAL ELECTIONS: FINANCING CAMPAIGNS FOR FAIR AND IMPARTIAL COURTS 11 (Brennan Center: 2002).

9. Roy A. Schotland, *Judicial Selection at the Crossroads*, prepared for the 2003 Midyear Meeting of the Conference of Chief Justices.

10. *Id.*

11. Deborah Goldberg, Craig Holman, and Samantha Sanchez, JUSTICE AT STAKE CAMPAIGN, THE NEW POLITICS OF JUDICIAL ELECTIONS 7 (February 2002).

12. *Suster v. Marshall*, 951 F.Supp. 693 (N.D. Oh. 1996).

13. *Suster v. Marshall*, 149 F.3d 523 (6th Cir. 1998).

aign contribution limits are permissible, but limits on expenditures are not. In *Buckley*, the Court ruled that contribution limits do not pose a First Amendment concern since they do not “in any way infringe the contributor’s freedom to discuss candidates and issues.”¹⁵ However, spending limits “necessarily reduce the quantity of expression by reducing the number of issues discussed, the depth of their exploration, and the size of the audience reached.”¹⁶ Until recently, some legal scholars believed that states’ interest in preserving the impartiality of their judiciaries might justify greater restrictions on speech during judicial campaigns than during campaigns for other offices. However, recent court rulings have rejected this argument.¹⁷

Other states have responded to the rising costs of judicial elections by pursuing public financing of judicial elections. Wisconsin offers

public financing for supreme court campaigns, but funding has declined steadily since the program was introduced in the late 1970s. In 2002, the North Carolina legislature adopted the Judicial Campaign Reform Act, which provides public funding for supreme court and court of appeals candidates if they raise qualifying contributions and agree to strict fund-raising and spending limits.

THE ROAD TO REFORM

In the late 1970s, plaintiff lawyers in Texas began doling out substantial sums to elect the judicial candidates they preferred.¹⁸ In 1980, Texas became the first state in which the cost of a judicial race exceeded \$1 million.¹⁹ Between 1980 and 1986, contributions to candidates in contested appellate court races increased by 250 percent.²⁰ In 1987, the *Wall Street Journal* questioned the Texas Supreme Court’s integrity after the court refused to hear an appeal of a case involving Texaco and Pennzoil. The lower court had ruled in favor of Pennzoil, a company whose lawyers had given \$355,000 to the court’s justices between 1984 and 1987, over Texaco, whose lawyers had also contributed to the campaigns of supreme court justices but in far smaller amounts.²¹ This case also received coverage in the *New York Times* and *Time*, and the CBS newsmagazine “60 Minutes” ran a scathing piece about Texas judicial politics entitled “Justice for Sale?”

The increasing amount of money spent in judicial elections and the accusations of favoritism toward the plaintiffs’ bar led to calls for dramatic reform. In 1986, Chief Justice John Hill, working with the speaker of the Texas House of Representatives and the lieutenant governor, appointed the Committee of 100 to study judicial reform in Texas. The group came up with a “merit election” plan for the state’s judiciary known as the Texas Plan.²² In promoting the plan, the group cited not only the charges of favoritism toward large campaign contributors but also the tremendous growth in the state’s population and the

14. *Buckley v. Valeo*, 424 U.S. 1 (1976).

15. *Id.* at 21.

16. *Id.* at 19.

17. See, e.g., *Suster v. Marshall*, 951 F.Supp. 693; *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002); and *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002).

18. Anthony M. Champagne & Kyle D. Cheek, *Texas Judicial Selection: Bar Politics, Political Parties, Interest Groups and Money*, 3 GOV’T, LAW & POL’Y J., 51 (Fall 2001).

19. Anthony Champagne, *Interest Groups and Judicial Elections*, 34 LOY. L.A. L. REV. 1391 (2001).

20. John L. Hill, Jr., *Taking Texas Judges Out of Politics: An Argument for Merit Selection*, 40 BAYLOR L. REV. 339 (1988).

21. Thomas Petzinger, Jr. & Caleb Solomon, *Quality of Justice: Texaco Case Spotlights Questions on Integrity of the Courts in Texas*, WALL ST. J., Nov. 4, 1987, at 1.

22. The Texas Plan, as originally proposed, called for 16 nominating commissions (one for the appellate courts, one in each of nine administrative regions, and one in each of the counties of Dallas, Harris, Tarrant, Bexar, El Paso, and Travis). Each nominating commission would consist of two lawyers and two non-lawyers chosen by the governor, two lawyers and one non-lawyer chosen by the lieutenant governor, two lawyers and one non-lawyer chosen by the speaker of the house, three lawyers chosen by the president of the state bar association, one non-lawyer chosen by the chair of the Democratic Party, and one non-lawyer chosen by the Republican Party chair. The appropriate commission would nominate three candidates in the case of a judicial vacancy. The governor would appoint one of the nominees, who would have to be confirmed by the senate and face a retention election after a year in office. The judge would then face a retention election every six years. See Anthony Champagne, *Judicial Reform in Texas*, 72 JUDICATURE 146, 153 (1988).

increasing lack of voter familiarity with judicial candidates. Between 1950 and 1985, the state had more than doubled in population from 7.7 million to 15 million.²³

In spite of its support among governmental leaders, the Texas Plan, even with a modification that would have allowed rural counties to keep elections and a later compromise that would have restricted merit selection to appellate courts, encountered intense opposition from all sides.²⁴ Minorities and women complained that the plan seemed designed to limit their rise to judgeships at a time when their growing numbers made their election more likely than it had in the past. Many Democratic leaders, because they had a strong constituency among minority and women voters, objected to the plan. Democrats also feared that merit selection might limit their ability to put like-minded judges on the bench. Some Republicans opposed the proposal as well, citing gains at the polls during the early 1980s. Plaintiff lawyers came out against the Texas Plan, fearing that the gains they had won would be negated. Organized labor also voiced its disapproval. In response to the Committee of 100, the Committee of 250, which included six supreme court justices, formed. Hill's Texas Plan stirred up so much opposition from his colleagues on the supreme court that he eventually resigned over the issue, believing that he could better lead the reform movement as an outsider.²⁵ Hill founded Texans for Judicial Excellence (TJE) to lobby for merit selection.

Between 1986, when Hill first proposed the Texas Plan, and 1995, when the Judicial Campaign Fairness Act was passed, a number of events conspired to limit the prospects for judicial selection reform. Merit selection and retention, as embodied in the Texas Plan, took a beating in other states. Missouri, the first state to adopt merit selection, experienced a scandal in which the governor was accused of attempting to stack the supreme court with friendly judges. In California, the unseating of three

supreme court justices, including Chief Justice Rose Bird, showed that retention elections could be just as expensive and ideological as other judicial elections. Special interest groups, who targeted the three justices because of their opposition to the death penalty, spent more than \$6 million to campaign against them; the justices and their supporters spent more than \$3 million.²⁶

A case brought against the state of Texas under the Voting Rights Act may have helped to increase resistance to both merit selection and nonpartisan elections as reform possibilities in the late 1980s and early 1990s. In 1988, ten individual voters and the League of United Latin American Citizens (LULAC) filed suit under Section 2 of the Voting Rights Act, claiming that the election of trial court judges on a countywide basis diluted the voting power of African-Americans and Hispanics. The federal district court sided with the plaintiffs and gave the state legislature an opportunity to fashion a remedy before the court imposed one.

In the special legislative session that followed, Governor Clements refused to support the single-member district remedy proposed by LULAC. Instead, Clements and the Democratic leaders of the house promised to push for merit selection in the next legislative session.²⁷ LULAC and other minority groups opposed this plan, citing Clements's poor record in choosing minorities when given the opportunity to do so.²⁸ The district court rejected both district-based judicial elections and merit selection, and instead issued an order for nonpartisan elections in the state's nine most populous

23. *Id.* at 151.

24. *Id.* at 152-153.

25. Wayne Slater, *Chief Justice Hill Resigns*, THE DALLAS MORNING NEWS, Aug. 27, 1987, at 1A.

26. Roy A. Schotland, *Introduction: Personal Views*, 34 LOY. L.A. L. REV. 1361, 1362, footnote 4 (2001).

27. Debbie Graves, *Officials, Lawyers Demand Reform of Judicial Elections*, AUSTIN AMERICAN-STATEMAN, Nov. 29, 1989, at B2; *LULAC Opposes Plan to Appoint Judges*, AUSTIN AMERICAN-STATEMAN, Dec. 3, 1989, at B8.

28. Bruce Hight, *Minorities Criticize Judicial Merit Election Plan*, AUSTIN AMERICAN-STATEMAN, Dec. 4, 1989, at B1.

counties.²⁹ Although the U.S. Court of Appeals for the Fifth Circuit later reversed the district court's decision, holding that Section 2 of the Voting Rights Act does not apply to judicial elections,³⁰ the U.S. Supreme Court rejected this ruling and returned the case to the court of appeals.³¹ The Fifth Circuit then ruled that the plaintiffs had failed to prove a Section 2 violation.³² After six years of litigation, the status quo was preserved.

For judicial reformers, this controversy revealed two points. First, minority voters were strongly opposed to merit selection because they did not trust governors, especially Republican governors, to appoint minorities. Second, many voters would remember nonpar-

tisan elections as a reform imposed by a federal court. Some minority groups also expressed dislike for nonpartisan elections, arguing that minorities had better chances through partisan elections.³³ The likelihood of either of these reforms achieving broad popular or legislative support decreased during and immediately after the Voting Rights Act controversy.

Another reason that judicial selection reform failed to progress during this time was that it did not have the strong gubernatorial support that has proven crucial in other states, such as New York. Texas governors let events lead them rather than taking initiative on the issue. Governor Clements was a late convert to merit selection and, at the time, seemed to support the reform primarily to prevent a federal court from imposing other remedies.³⁴ Governor Ann Richards, who served from 1990 to 1994, favored a switch to district-based elections as a means of preserving minority voting strength.³⁵

In New York, as discussed in another chapter, the strong support of the state's top judge was an important factor in bringing about reform. Texas's chief justices have shown similar leadership but without as much success. Chief Justice Hill resigned from the court to focus his efforts on the fight for merit selection.³⁶ Hill's successor, Chief Justice Tom Phillips, has followed up on Hill's legacy by being a constant critic of the current system of judicial selection in Texas.³⁷ In Phillips's view, a system that includes gubernatorial appointment and retention elections³⁸ or "robust" public funding of judicial elections would be the best solution; however, according to the chief justice, those states that cannot achieve these ambitious measures should "make incremental reforms . . . by imposing reasonable contribution limits, proscribing outrageous campaign tactics, and mandating the full and timely disclosure of all campaign activities."³⁹

Since the early 1990s, there have been two tireless advocates of judicial selection reform in the Texas legislature: Senator Rodney Ellis, a

29. Lawrence E. Young, *Ruling Likely to Alter Judges' Campaigns*, THE DALLAS MORNING NEWS, Jan. 7, 1990, at 33A.

30. *LULAC v. Clements*, 914 F.2d 620 (5th Cir. 1990).

31. *Houston Lawyers' Association v. Attorney General of Texas*, 501 U.S. 419 (1991).

32. *LULAC v. Clements*, 999 F.2d 831 (5th Cir. 1993).

33. For example, Demetrius Sampson of the J.L. Turner Legal Association, an African-American group, said that his group was opposed to nonpartisan elections because its membership believed that nonpartisan elections hurt voter turnout. Young, *supra* note 29.

34. After leaving office, Governor Clements joined Texans for Judicial Excellence and later Make Texas Proud, organizations founded by former Chief Justice Hill to fight for judicial selection reform. *Clements, Ex-Foes Cooperate on Judicial Election Reform*, THE DALLAS MORNING NEWS, Oct. 16, 1993, at 13F.

35. Christy Hoppe & Lori Stahl, *New Plan for Electing State's Judges Sought: Democrats, Minorities Who Are Upset with Ruling Vow to Fashion Strategy*, THE DALLAS MORNING NEWS, Jan. 20, 1994, at 23A.

36. Hill was not alone in leaving the supreme court because he hoped for a move away from judicial elections. In 1995, Justice Bob Gammage retired a year before his term ended, describing Texas's judicial selection process as one that "erode[d] public confidence and corrupt[ed] the courts." Gammage said that he hoped his resignation would draw attention to the need for reform. George Kuempel, *Retiring Justice Slams Texas System*, THE DALLAS MORNING NEWS, Aug. 25, 1995, at 22A.

37. Thomas R. Phillips, *Judicial Independence and Accountability*, 61 LAW & CONTEMP. PROBS. 127 (1998).

38. One of the sticking points of Hill's merit selection plan was who would "pick the pickers," i.e., the nominating commission. Although Phillips has endorsed gubernatorial appointment and retention elections, he has not been a vocal proponent of a merit selection system that includes a nominating commission.

39. Phillips, *supra* note 37, at 138.

Democrat from Houston, and Senator Robert Duncan, a Republican from Lubbock.⁴⁰ Both senators introduce reform bills in every legislative session, but they face an uphill battle for two reasons. First, Texas's constitution discourages work on "secondary" issues such as judicial selection reform; the legislature only meets every two years and then for only 140 days. With the press of more urgent issues, it is difficult for judicial reform-minded legislators to get their colleagues to pay attention to their bills. Second, the house of representatives has traditionally been resistant to merit selection, with bills either dying in committee or failing to receive the votes of at least 100 members.

Given the obstacles that judicial selection reform faces in Texas, a number of factors made 1995 a good time for campaign finance reform. First, it was clear from events over the past decade that more far-reaching reforms were unlikely to succeed. The new governor, George W. Bush, had also announced his opposition to any plan that would do away with the direct election of judges, and the governor's opinion weighed heavily on Republicans.⁴¹ Bush did not reject other reform possibilities, however.

Second, the 1994 elections had seen another expensive supreme court race between a plaintiff lawyers' candidate and a pro-business lawyers' candidate. In the Democratic primary, Rene Haas challenged conservative Raul Gonzalez, with the two candidates spending a total of nearly \$4.5 million.⁴² Third, the distracting issue of district-based elections, which appeared likely to affect any judicial selection reform plan, had been settled by the courts. Fourth, the state had new Republican leadership in 1995—leadership that wanted to see tort reform legislation passed and that was willing to agree to judicial campaign finance reform if Democrats would agree to tort reform. Finally, Senator Ellis found a better strategy for pushing a campaign finance bill that had failed in 1993.

In 1993, Ellis had proposed a bill that

passed the senate but attained little support in the house. Representative Jerry Madden, a Republican freshman from Plano who served on the house elections committee, described the bill as "too bureaucratic"⁴³ and worked against it. In 1995, Ellis approached Madden about coming up with a bipartisan bill that would achieve more broad-based support. The 1993 bill had failed in the house in part because of opposition from judges.⁴⁴ Madden polled judges and unsuccessful judicial candidates to ask them what reforms they thought would improve judicial elections. Madden and Ellis also sought input from the League of Women Voters, Common Cause, and the leadership of both political parties. According to Madden, they had two main goals: figuring out which reforms would be feasible and restoring the public's faith in the judiciary.

The bill that was eventually proposed focused particularly on limiting individual and law firm contributions because candidate polling and discussions with parties and government reform groups indicated that enormous contributions from wealthy individuals and large law firms tainted the integrity of judicial elections. Plaintiff lawyers, who tend to come from small firms, also wanted law firm limits in addition to individual limits because they felt that they could not compete with the large Dallas and Houston corporate firms.⁴⁵

According to Mark Hey, an aide to Representative Madden, Madden built support for the bill by seeking the opinions of others, especially judges. Reform advocates could point to their research as evidence that the

40. In the Texas house, Representative Pete Gallego and former Representative Robert Junell have also been active in recommending judicial selection reform.

41. Ken Herman, *Bush Signs Judicial Campaign Reform Bill*, AUSTIN AMERICAN-STATEMAN, June 17, 1995, at B5.

42. Champagne & Cheek, *supra* note 18, at 52.

43. Telephone interview with Representative Jerry Madden (Jan. 8, 2003).

44. Telephone interview with Mark Strama, aide to Senator Ellis (Jan. 9, 2003).

45. Telephone interview with Mark Hey, aide to Representative Madden (Jan. 8, 2003).

people most affected by the legislation wanted the recommended changes. Hey also believes that Ellis's decision to reach out to a house Republican on the elections committee helped ensure that the measure would achieve broader support than the 1993 bill.⁴⁶ Although Madden was a relatively junior representative, his Republican roots were strong because he had previously served as chair of the Republican Party of Collin County, a predominantly Republican suburban county north of Dallas.

Mark Strama, who was an aide to Ellis at the time, said that another key factor in garnering support in the house was getting the backing of Republicans who sought tort reform. Governor Bush had defeated Democrat Ann Richards after she had served only one term, and Republicans had made gains in the legislature. Tort reform was a key issue for the state's new political leadership, and a group called Texans for Lawsuit Reform had suggested a number of reform measures, including judicial campaign contribution limits. According to Strama, Ellis and other Democrats told the advocates of tort reform that Democrats could agree to some of the tort reform proposals if tort reform supporters were serious about campaign contribution limits.

Strama also maintains that both civil defense lawyers and plaintiff lawyers were willing to give campaign contribution limits a

chance because of the high cost of judicial elections. "It was interesting," Strama notes. "When I talked to lawyers from both sides who had been major contributors, each was convinced they were being outgunned by the other. So instead of fighting the legislation to curtail campaign spending, both were willing to try something that they hoped might lower their expenses."⁴⁷

Both the house and the senate approved the Judicial Campaign Fairness Act in May, and on June 17, 1995, Governor Bush signed the bill into law.⁴⁸ The act limits individual contributions to statewide judicial candidates to \$5000;⁴⁹ individual contributions to other judicial candidates are limited to between \$1000 and \$5000, depending on the population of the district.⁵⁰ The law also limits contributions from law firms and members of law firms to \$50 if aggregate contributions from a firm and its members exceed six times the maximum individual contribution limit for that judicial office (\$30,000 for statewide candidates). Total contributions from PACs are limited to 15 percent of the voluntary expenditure limits for that office, so that candidates for statewide judicial offices may accept up to \$300,000 in PAC donations. The law requires that contributors be identified by name, address, and job title. The law also establishes voluntary expenditure limits, with a unique enforcement procedure: the opponent of any candidate who exceeds the expenditure limits is no longer bound by the contribution limits.⁵¹

THE IMPACT OF REFORM

On the day Governor Bush signed the Judicial Campaign Fairness Act (JCFA), Chief Justice Phillips described the law as "an excellent first step in comprehensive campaign finance reform."⁵² When asked his opinion of this statement in early 2003, Representative Madden, the house Republican sponsor of the measure, disagreed, saying judicial reform had gone "as far as it needs to go."⁵³ Between these

46. *Id.*

47. Strama, *supra* note 44.

48. V.T.C.A. Election Code § 253.151-253.176.

49. Judges of the supreme court and court of criminal appeals are elected statewide.

50. If the population of the district is less than 250,000, the limit is \$1000. If the district's population is between 250,000 and one million, the limit is \$2500. The limit is \$5000 in districts that have a population greater than one million.

51. Expenditures by candidates for statewide office are limited to \$2 million. Expenditures by court of appeals candidates are limited to between \$350,000 and \$500,000, depending on the population of the judicial district. Expenditures by all other judicial candidates are limited to between \$100,000 and \$350,000, depending on the population of the judicial district.

52. Herman, *supra* note 41.

two opinions lies the present reality of judicial selection reform in Texas.

While the expense of judicial elections has eased somewhat in recent election cycles and the disclosure rules in the Judicial Campaign Fairness Act have made judicial elections appear “cleaner,” the perception that justice is for sale has lingered. Some argue that because Texans prefer to elect their judges, the only hope for further reform is to revisit the contribution limits of the JCFA or to adopt public financing of judicial elections. Organizations that continue to push for campaign finance reform in Texas include Campaigns for People, Common Cause, and Public Citizen. Their efforts are informed by a legal watchdog group founded in 1997, Texans for Public Justice (TPJ). Among other things, TPJ tracks campaign contributions to public officials in Texas, including supreme court justices, and has issued a number of reports that examine the relationship between campaign contributions to the court’s members and the decisions of the court.⁵⁴

In 2000, Public Citizen and other nonprofit organizations filed a lawsuit in federal court challenging Texas’s judicial campaign finance system as a violation of a citizen’s constitutional right to due process of law. The suit alleged that judges cannot be impartial when they solicit and receive campaign contributions from lawyers who argue cases before them. In *Public Citizen, Inc. v. Bomer*, the trial court ruled that the issue should be resolved by Texas citizens and their legislators.⁵⁵ The court of appeals affirmed, holding that the plaintiffs lacked standing to bring the suit.⁵⁶

In 1999, Governor Bush vetoed a bill that would have put judicial candidate information on the Internet. Although it had passed both houses with bipartisan support, Governor Bush rejected the measure because it called on the secretary of state to oversee the program. Bush believed that this would put the secretary of state in an “inappropriate role.”⁵⁷ In 2001, Governor Rick Perry signed a similar law. If

implemented by the secretary of state, the law would require judicial candidates to provide a statement that included their education, professional experience, and other biographical information. The guide would be available to the public at least 45 days before the election.

Figures like Chief Justice Phillips, former Chief Justice Hill, Senator Ellis, and other legislators remain steadfast in their pursuit of merit selection or gubernatorial appointment for at least the appellate courts, giving speeches and interviews on the subject, introducing or supporting legislation, and encouraging discussion. In the 1997 legislative session (the first session following the passage of the JCFA), legislators introduced various bills that called for a modified merit selection plan for appellate courts, nonpartisan judicial elections, and the elimination of straight-ticket voting in judicial elections. None of these measures passed. In the 1999, 2001, and 2003 sessions, bills calling for the appointment and retention of appellate judges passed the senate but stalled in the house. In 2003, Hill formed Make Texas Proud, a political committee dedicated to promoting an appointment-retention system.

Various opinion surveys conducted since the 1995 reforms reveal continued dissatisfaction among voters, lawyers, and judges with all aspects of the judicial selection process in Texas. One set of surveys indicated that 83 percent of voters, 42 percent of lawyers, and 52 percent of judges supported nonpartisan elections.⁵⁸ In another series of surveys, 55 percent

53. Madden, *supra* note 43.

54. The reports are *Pay to Play, Checks and Imbalances, and Payola Justice*. <<http://www.tpj.org/reports/>>.

55. *Public Citizen, Inc. v. Bomer*, 115 F.Supp.2d 743 (W.D.Tex. 2000).

56. *Public Citizen, Inc. v. Bomer*, 274 F.3d 212 (5th Cir. 2001).

57. Steve Brewer and Kathy Walt, *Bush Vetoes Public-Defense Bill, OKs Health-Care Fee Negotiations*, HOUSTON CHRONICLE, June 22, 1999, at 1A.

58. Texas Supreme Court / State Bar of Texas / Texas Office of Court Administration (1999) <<http://www.courts.state.tx.us/publicinfo/publictrust/execsum.htm>>; Campaigns for People (2002), discussed in Janet Elliot, *Ethics Rules Revised for Judicial Candidates*, HOUSTON CHRONICLE, Sept. 19, 2002, at 34.

of voters reported having little or no information on judicial candidates in the last election,⁵⁹ and 91 percent of judges said that “because voters have little information about judicial candidates, judges are often selected for reasons other than qualifications.”⁶⁰ According to a recent survey of Texas judges, 50 percent were dissatisfied with the tone and conduct of judicial campaigns, 69 percent felt that they were under pressure to raise money during election years, and 84 percent said that “special interests are trying to use the courts to shape policy.”⁶¹ Finally, survey results showed that between 72 percent and 83 percent of voters,⁶² and between 28 percent and 48 percent of judges,⁶³ believed that campaign contributions had at least some influence on judges’ decisions.

While the 1995 Judicial Campaign Fairness Act succeeded in placing some controls on expensive campaigns, the continued concerns about judicial elections indicate that more work could be done in Texas. The chief justice, public interest groups, and some lawmakers believe that judicial selection reform should go further. The question in the coming years will be whether state leaders and the public will push for change.

59. Campaigns for People (2002), discussed in Bruce Davidson, *Low-Key Judicial Races Are Expected*, SAN ANTONIO EXPRESS-NEWS, Sept. 1, 2002, at 2G.

60. Justice at Stake Campaign (2001), <<http://www.justiceatstake.org/files/SurveyPullOutTexas.pdf>>.

61. *Id.*

62. Texas Poll (1997), discussed in Ken Herman, *Legislature Again Tackles Reforms for Election of Judges*, AUSTIN AMERICAN-STATEMAN, Mar. 9, 1997, at B1; Texas Supreme Court (1998), discussed in Warren Richey, *Justice for Sale? Cash Pours into Campaigns*, CHRISTIAN SCIENCE MONITOR, Oct. 25, 2000, at 2; and Campaigns for People (2002), *supra* note 59.

63. Texas Supreme Court (1998), *id.*; Texas Supreme Court / State Bar of Texas / Texas Office of Court Administration (1999), *supra* note 58; and Justice at Stake Campaign (2001), *supra* note 60.
