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WE SAY JUDICIAL ELECTIONS

Texas needs judicial reform

By Editorial Board

The partisan election of judges is one of the more negative facets of state government, and for decades there have been attempts to change Texas' judicial election system. We long have supported efforts to take party politics out of judicial elections and to reduce the effect of campaign money on the state's courts.

But like the occasional struggle to revise or rewrite the clunky and heavily amended Texas Constitution, attempts to change the state's judicial selection process always have proved futile. The reform effort flares then fades away in defeat — only to reemerge a few years later because the need for reform is so obvious. It can't help but reassert itself.

Perhaps the nth time is the charm. As the American-Statesman's Chuck Lindell reported this week, another attempt to reform the state's judicial election system is about to be launched. Legislators plan to assemble a special bipartisan committee consisting of six Republicans and six Democrats to study how best to select impartial judges. The panel will recommend changes for lawmakers to consider during the next legislative session, which begins in January 2015. We wish the committee luck.

Campaigns are expensive, and judges must seek contributions to run for office. Naturally their major donors tend to be lawyers, businesses and corporations — people and entities that often appear in court before them. It is a system flush with potential conflicts of interest. Thus it also is a system that harms the public's confidence in justice and judges alike.

Texans whose time in the state dates back more than a few months or years can recall the stinging embarrassment generated by a 1987 "60 Minutes" segment about Texas' system of electing judges. Titled "Justice for Sale," the segment found that trial lawyers who raised millions of dollars for judges won two-thirds of their cases before the state Supreme Court. The news program revisited the issue in 1998, after Republicans had gained control of the court, and found that businesses and corporations won most of the time 11 years later. Opposite result, but same story: Money influenced justice.

Minor tweaks have been made to the system over the years, but its partisan nature and fund-raising demands remain its essential problem. Corruption is not the only risk, however. There also is always the risk — occasionally fully realized — of electing mediocre or unqualified judges, because when judicial elections are partisan, a candidate's party affiliation can outweigh his or her judicial qualifications and record.

Texas is one of only a handful of states that hold partisan judicial elections. Several potential reforms have been explored over the years, and we undoubtedly will see a few of them again as part of this new effort. A perennial and favored proposal is to appoint judges based on merit and then to require them to go before voters a few years later in a nonpartisan, yes-or-no retention election. A new appointed judge would replace a judge whom voters reject, and the process would repeat itself.

The past three chief justices of the Texas Supreme Court favored reform, as Lindell noted in his report. Wallace Jefferson, who resigned as chief justice Oct. 1 to re-enter private law practice, frequently spoke in support of an appointment-retention system.

Talk of changing the judicial election system has never resulted in change. Potential reforms are complicated solutions involving many parts and lots of movement — nomination commissions, gubernatorial or legislative appointments, nonpartisan retention elections. And changing the way Texans elect judges would require a constitutional amendment that needs approval by two-thirds of the Texas House and Senate. The state's Democratic and Republican parties and the lawyers and businesses that contribute to lawmakers' campaigns benefit from the status quo. They oppose changing the system, and their opposition carries weight.

A constitutional amendment also would need the approval of a majority of voters. The structure of the state courts system might be a mystery to many voters and judicial candidates complete unknowns, but Texans have been electing judges since the 1870s, and that's a power not easily abandoned.

Every system has its imperfections, but no system is as unfavorable to justice as the partisan election of judges. Texas finally should move toward a nonpartisan system that lessens the influence of money and promotes merit above party politics.