

Greener Pastures

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The Oklahoma House of Representatives plans to address whether to change the method of judicial selection in Oklahoma. One does not have to look far for an example of partisan elections for appellate judges. The Texas Constitution provides for those types of elections. During the election season, visitors to Texas can see this process in action, through a multitude of billboards, favoring or disfavoring a judicial candidate, often from a partisan viewpoint.

Is the pasture greener in Texas? Some members of the Texas appellate judiciary don't think so. Texas Supreme Court Justice Don Willett recently said that he and every member of his court favor smart judicial-selection reform, with the goal of moving away from "the current partisan elected system...Interestingly, the business lobby and tort-reform groups all favor scrapping (Texas') current (partisan) judicial-selection system.

Like Oklahoma, Texas constitutional law is rooted in populism. Former Texas Supreme Court Chief Justice Tom Phillips noted the state's populist roots, predicting that it would never have a judiciary appointed by the governor and confirmed by the Legislature. (This would be different from Oklahoma's current system using a nominating commission, gubernatorial appointment without legislative confirmation, followed by retention elections.)

Phillips was also opposed to the current Texas system of allowing partisan judicial elections. "Today on our court, most of the judges feel like this is not a good system," he said. "Most of us feel like judges should not run as Republicans or Democrats, which...in my opinion has been a terrible blow for the stability of our judiciary."

Before 1967, Oklahoma state judges were elected in partisan elections. In 1967, the Oklahoma Constitution was changed by referendum, creating the Judicial Nominating Commission and requiring that judicial elections must be nonpartisan. This referendum closely followed the 1966 Oklahoma Supreme Court corruption scandal.

But even before 1966, commentators were calling for nonpartisan judicial selection. In 1962, the Conference on Modern Courts in Oklahoma determined that the "objective of any method of selection should be to obtain judges free of political bias and collateral influence and possessed of qualities that will lead to the highest performance of their judicial duties."

To that noble sentiment, one might also add, from Federalist No. 78: "There is no liberty, if the power of judging be not separated from the legislative and executive powers."

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