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Time for a better system

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The recent guilty plea by U.S. Representative Randy Cunningham, R-Calif., follows numerous other high-profile investigations involving money and politics. Most such matters will be handled in federal court, but some, involving governors and even members of Congress, will land in state court. As the case of former U.S. House Majority Leader Tom DeLay, R-Texas, illustrates, money and politics don't mix when it comes to our judicial system, either.

DeLay's case is currently before San Antonio District Judge Pat Priest, who is the fifth judge to inherit the case. It began before Austin District Judge Bob Perkins. But DeLay's lawyers successfully challenged Perkins' impartiality because of past contributions to Democratic causes and candidates. Retired judge B.B. Schraub stepped in to select a successor. But the Democratic prosecutor challenged him because of his contributions to Republican causes and candidates. The case then went to Texas Chief Justice Wallace Jefferson. However, the prosecutor questioned his involvement, too, because of Republican ties, causing Jefferson to pass the case to Priest.

Avoiding musical benches

These events left experts, the media and the public questioning the way Texas and other states select their judges and wondering whether, in future cases involving political figures, the same game of musical benches will be played. It is a bleak illustration of what happens when state judges are dependent on partisan politics for their professional survival. It also highlights the need to ensure that the judiciary is free of the political pressures that properly influence decisions in the executive and legislative branches.

The tradition of electing state judges is uniquely American and was widely adopted in the 19th century to make the judiciary independent of the other branches of government. But that independence is threatened by judicial candidates' dependence on the individuals and special interests that support their election campaigns. In 1998, Texans for Public Justice issued a report finding that the seven Texas Supreme Court justices elected since 1994 had raised \$9.2 million-40% of which came from interests with cases before the court. A later survey, on behalf of the Texas Supreme Court and the State Bar of Texas, found that 48% of Texas judges believed that campaign contributions significantly influence courtroom decisions (though not necessarily their own decisions)-as did 69% of court staff and 79% of lawyers.

Whether or not judges' decisions are actually influenced by campaign contributions, the public-and litigants-are understandably concerned that they are. The Constitution Project develops bipartisan consensus on controversial legal and policy issues. We have long advocated for judicial independence and for states to take steps to insulate their judicial branches from political pressures.

In *Choosing Justice: Reforming the Selection of State Judges*, a bipartisan group of distinguished experts agreed that states should enforce stringent campaign rules to ensure that judges, once elected, remain neutral on the bench. The Constitution Project's *Higher Ground Standards for Conduct of Judicial Candidates* calls for judicial candidates to engage in nonpartisan campaign conduct and to insulate themselves from even the appearance of impartiality.

These standards are essential because judicial candidates are not supposed to be political candidates in the traditional sense. Candidates for legislative or executive branch positions represent the interests of a geographically

defined group of people and may favor a political party and certain interest groups. But judges do not represent constituents. They represent the law.

Recently, there has been growing attention to problems plaguing the election of state judges. Some states have moved from partisan to nonpartisan elections. Others have moved from the direct election of judges to a system of merit selection, which involves a nonpartisan nominating commission recruiting and evaluating judicial candidates. My native state of North Carolina recently made all judicial offices nonpartisan. It also adopted a system of voluntary campaign financing so that candidates no longer have to rely on money from interested parties who may appear before them.

The Constitution Project applauds states' efforts to ensure the impartiality of our courts by reducing partisanship in the selection of state judges. However, as the DeLay case demonstrates, much remains to be done. Otherwise such partisan dynamics will continue to surface, and there will be fewer judges available to hear cases, sacrificing even further Americans' confidence in their courts.

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