

BILL ANALYSIS

C.S.H.B. 404
By: Madden
Judicial Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Prior to August 2002, Canon 5(1) of the Texas Code of Judicial Conduct (the “Code”) prohibited a judge or judicial candidate from making statements that indicated an opinion on any issue that may be subject to judicial interpretation by the office which was being sought or held, except that a discussion of a person’s judicial philosophy was appropriate if it did not suggest to a reasonable person the probable decision on any particular case.

Other states have similar provisions, commonly known as “announce clauses” forbidding judges or candidates for judicial office from announcing their views on disputed legal or political issues. In June 2002, the US Supreme Court, by a 5-4 margin, held that Minnesota’s “announce clause” violated the First Amendment. *Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S.Ct. 2528, 153 L.Ed. 694 (2002). While some of the majority expressed skepticism about the practice of electing judges, the Court held that if judges are elected, it is not the function of government to select which issues are worth discussing or debating in the course of a political campaign.

On August 21, 2002, the Texas Supreme Court deleted Canon 5(1) and amended other sections of the Code to conform with the *White* decision. C.S.H.B. 404 takes the additional step of permitting judges to attend political conventions as voting delegates.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Subchapter B, Chapter 33, Government Code, is amended by adding Section 33.039 to read as follows:

Sec. 33.039. POLITICAL PARTY ACTIVITIES. Notwithstanding the Code of Judicial Conduct or any other law, voting by a judge in a political party convention or serving as a delegate to any precinct, county, senatorial district, state, or national political party convention, does not constitute judicial misconduct.

SECTION 2. The change in law made by this Act applies to an investigation of or a formal proceeding regarding a complaint of judicial misconduct being conducted on or begun on or after the effective date of this Act, regardless of whether the conduct or act that is the subject of the investigation or proceeding occurred or was committed before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect on September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original permitted a judge to participate in political party activities, including voting in a political party convention and serving as a delegate to a convention.

The substitute deletes the reference to political party activities, limiting the bill's scope to voting by a judge in a political party convention or serving as a delegate to any precinct, county, senatorial district, state, or national political party convention.