

To: Janet Abaray, Chair
Judicial Branch & the Administration of Justice Committee

From: Steven H. Steinglass
Senior Policy Advisor, Ohio Constitutional Modernization Commission

Re: **The Impact of the Nonpartisan Judiciary Act of 1911 on Voter Turnout in Judicial Elections in Ohio**

Judicial Branch Question No. 6

Can we confirm the information from Judge Trapp that there was a sharp drop off in voting for judges once the statute banning party affiliation was enacted? Can we get the details on that?

Date: May 7, 2014

The Impact of the Nonpartisan Judiciary Act of 1911 on Voter Turnout in Judicial Elections in Ohio

There was definitely a drop-off in voting for judges (as contrasted to other candidates) in the elections following the 1911 enactment of the Nonpartisan Judiciary Act. But as the discussion below suggests, the move to a general election ballot “without designation” was part of a statute that also required a “separate and independent ballot” (and effectively banned straight-ticket voting) for judicial elections. Taken together, these two developments likely explain the sharp drop-off in voting for judges after 1911.

Background

In 1911 during the height of the Progressive Movement, the Ohio General Assembly enacted the Nonpartisan Judiciary Act, *see* General Code 5054-2 (now ORC sec. 3505.04), under which judges were to be elected at general elections on separate ballots that had no party designation. The 1911 Act provided as follows:

The names of all candidates for election to any of the judicial offices specified in Section 1 of this act, whose nominations have been duly made, and not withdrawn, shall be placed upon a *separate and independent ballot*, entitled, "Judicial Ticket," *without any designation* whatever, except the office or offices to which said candidates are to be elected, and the number of candidates required to be elected to each such office, and such directions as will aid the elector as "vote for one," "vote for two," and the like and such certification of the election officers upon the back of the ballot as is prescribed by law. (emphasis added).

This legislation, which was enacted after the voters approved the call for the 1912 Constitutional Convention, sought to wrest control of the judicial nominating process from the political parties that were seen as having captured it.

1912 Constitutional Amendment

Prior to 1912, the prevailing method for nominating judges in Ohio was by political party conventions, see Francis R. Aumann, *The Selection, Tenure, Retirement, and Compensation of Judges in Ohio*, 5 U. Cin. L. Rev. 408, 411 n.8 (1931). In 1912, however, the Constitutional Convention proposed an amendment (adopted by the voters) that required the use of direct primaries to nominate elected officials, including judges. See Art. V, sec. 7 (“All nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law . . .”). This amendment, though requiring the use of primaries for the nomination of judges, did not require the use of a non-partisan ballot for judicial elections.

Cumulative Changes

The multiple changes in 1911-1912 had a significant impact on the process of selecting judges. “Together these changes abolished the formal nominating power of party conventions, established partisan primaries to nominate judges (and other elective officials), and provided for nonpartisan election of judges.” Michael E. Solimine & Richard B. Saphire, *The Selection of Judges in Ohio* 237, *The History of Ohio Law* (2004).

Straight-Ticket Voting

The impact of these changes was first seen in the November 1912 general election. Prior to 1912, Ohio voters were able to vote for judges on straight-ticket (or straight-party) ballots, or, if they preferred, to split their votes among candidates that appeared on different party lines. A voter who wished to vote a straight ticket could do so simply by making a single mark in the party emblem on the paper ballot. Such a vote was counted as a vote for all the candidates on the party’s line as well as (for a period of time) the statewide ballot issues endorsed by the party. On the other hand, voters who elected to split their tickets could do so by making an appropriate mark near the name of the preferred candidate(s) in each contest.

Changes in Voter Turnout for Judicial Elections

In the general elections from 1908 to 1920, there was a sharp decline in the number of voters for the statewide judicial candidates. In 1908 and 1910 there was virtually no drop-off with only 1.6% and 3.1% respectively of those voting for governor not voting in the highest turnout supreme court race.

From 1912 to 1920, on the other hand, the corresponding drop from the gubernatorial election turnout to the turnout for the highest turnout supreme court justice or chief justice race was between 24.8% and 30.7% (as more fully illustrated in the attached chart).

Straight-ticket voting continued for non-judicial races in Ohio after the 1912 Convention, but it was prohibited as the result of an amendment to the Ohio Constitution. In 1949, Ohio voters approved an initiated amendment that required that “[a]n elector may vote for candidates . . . only and in no other way than by indicating his vote for each candidate separately from the

indication of his vote for any other candidate.” Ohio Const. Art. V, sec. 2a. The adoption of this amendment barring straight-ticket voting would have independently prevented the use of straight-ticket voting for judicial races had the 1911 law not been in force.

Conclusion

The statutory requirement of a separate and independent ballot without party designation made straight-ticket voting (for judges) impossible and likely explains the sharp drop-off of voters for judicial elections in Ohio after 1911.¹

DRAFT

¹ **Caveat.** It is not clear how much of the drop-off in judicial voting was caused by the removal of party designations as contrasted to the requirement of a separate and independent ballot for judicial races.

Ohio

Comparison of Total Votes for Governor with Total Votes for the Highest Turnout State Supreme Court Contest

1908-1920

1908-1920 ²	Governor Turnout ³	Highest Ohio Supreme Court Turnout ⁴	Judicial Turnout as a % of Gubernatorial Turnout	Drop-Off
1908	1,123,198	1,105,108	98.4%	1.6%
1910	924,463	895,544	96.9%	3.1%
1912	1,036,731	730,165	70.4%	29.6%
1914	1,129,223	854,458	74.9%	25.1%
1916	1,174,057	871,845	74.3%	25.7%
1918	960,862	722,208	75.2%	24.8%
1920	2,003,183	1,388,335	69.3%	30.7%

Source: Ohio Election Statistics (Ohio Secretary of State) (1910, 1912 & 1920).and research conducted by Chris Smith, Legislative Aide to Senator Michael Skindell.

² More complete research would review judicial election turnout in the years after 1920 to see if the post-1911 pattern continued.

³ **Governor vs. President.** The above chart uses voter turnout for governor in the general elections rather than the vote for president in the four presidential elections between 1908 and 1920 that involved both gubernatorial and presidential races. In fact, there was surprisingly little difference in voter drop-off in the presidential and non-presidential years. In two of the four elections (1908 and 1916), there were more votes for governor than for president with the presidential votes slightly exceeding the gubernatorial votes only slightly in 1912 and 1920 (when there was less than a 1% drop-off between presidential and gubernatorial voter turnout).

⁴ **Highest Turnout Justice Race.** To make the comparisons, I used the highest voter turnout judicial election in those years in which more than one judicial election was on the ballot. For those years in which the voters were asked to vote for two candidates, the statistics of the Secretary of State do not identify the judges by specific race. In those instances, I totaled the number of votes cast for all the candidates and divided by two