TO THE ENDANGERED SPECIES LIST, ADD: NONPARTISAN JUDICIAL ELECTIONS

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> Sam Houston, on the Texas Democratic state chairman who began the practice of having the party endorse judicial candidates: "A drop of his blood would freeze a frog."[1]

I. INTRODUCTION

Today, of the thirty-nine states that have judicial elections for some or all of their judges, twenty have nonpartisan elections—in thirteen states, for all judges.[2] Three forces are converging to jeopardize these states' ability to preserve nonpartisanship in elections—or, increasingly, to jeopardize all thirty-nine states' ability to preserve *any* distinctions between judicial and other elections. The first force is new—three federal court decisions. Two decisions came down in 2002: first, a 5-4 Supreme Court decision invalidating a few states' regulation of speech in judicial campaigns; second, an Eleventh Circuit invalidation of a limit on how funds are raised in judicial campaigns—a limit that has been law in thirty-six states.[3] The third decision came down in February 2003 from a federal district court in Utica, N.Y., invalidating the limits on several types of partisan activities by judicial candidates in New

The fact that twenty states have chosen nonpartisan elections—some only in the past two years, some for about a century—says much. If state sovereignty means anything, if there is any value in having "laboratories" of democracy,[6]