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Judicial selection should be done by state's voters

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The hue and cry arising from political corners regarding the method of selection of Tennessee's appellate judges will increase exponentially when the General Assembly convenes in 2009.

Lines are drawn by those who believe all state judges should be elected by the voters and others promoting a merit-selection plan by which a special committee screens applicants and makes recommendations to the governor. Arbitrating this issue in the context of a state constitution that reserves ultimate authority to the people, the legislature must divine whether its method of selecting our judges is consistent with democratic and republican philosophies codified in that constitution.

Tennessee enjoys a long history of voter involvement in judicial selection. From 1853 until 1971, voters elected all Tennessee judges. The "Tennessee Plan" replaced the direct elections of judges by voters in 1971 with selection of nominees by the Tennessee Judicial Selection Commission. Until 1994, elected officials controlled the selection of a majority of the positions on the selection commission.

But changes in 1994 by the legislature in the composition of the selection commission outsourced the naming of a majority of selection commission positions to members of unelected special-interest groups. The Tennessee Plan empowers the Tennessee Trial Lawyers Association, Criminal Defense Lawyers Association, Tennessee Bar Association and Tennessee Defense Lawyers Association to select nine of the 17 members of the selection commission. While elected leaders still make the appointments to the selection commission, special-interest groups lacking institutional responsibility to the voters are the source of a majority of members on the selection commission.

The legislature can restore voters' power and diminish that of special interests by following the federal government method of judge selection. The governor could appoint judges to the appellate courts with the advice and consent of the state Senate. The governor and the Senate would balance each other to ensure neither branch exercises unchecked will upon the people. Rather than special interests serving as gatekeepers, the governor and 33 senators elected by the people of this state would exercise that power.

This change could also alleviate another source of public cynicism by opening these hearings to the public.

The paradox of lawyers arguing to open some branches of our government to public view, but claiming the judicial system is unique and requires control of a select few, inflames the people's loss of faith in lawyers and the judicial system.

Neither "merit selection" nor "direct election" of judges is necessarily a bad thing, but the legislature should respect the long tradition of citizen involvement in the selection of their judges and remove the ability of special interests to rig the outcome of who will serve as judges.