

THE COMMERCIAL APPEAL

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Picking judges without politics: The lengthy battle over filling a Supreme Court vacancy revealed a flaw in the Tennessee Plan.

By Staff Reports

Most Tennesseans don't understand the method in which the state's Supreme Court and appellate court judges are chosen, according to a recent poll, but maybe the General Assembly knows enough to fix it.

It took 10 months of wrangling between Gov. Phil Bredesen and the Judicial Selection Commission before Bredesen was able to fill a vacancy on the state Supreme Court last June.

As Bredesen tried unsuccessfully to replace retiring Judge Adolpho Birch with another African-American jurist to his liking, the flaws of the Tennessee Plan were revealed.

While it's important to have a committee of Tennessee lawyers involved in the process, the way the current system works is too prone to political gamesmanship.

The Tennessee plan, which replaced the direct election of the Supreme Court, Court of Appeals and Court of Criminal Appeals in Tennessee, calls for appointments to vacant positions on those courts by the governor.

Once every eight years, voters are given the choice of whether to approve the reappointment of each jurist on those panels.

Between potential candidates and the governor whenever a vacancy occurs, however, stands the Judicial Selection Commission, which sends to the governor a list of three candidates to choose from. Although the governor can reject the list and ask for another, the JSC can basically control the process by offering the governor candidates it knows he won't touch.

The process is up for renewal this year. Although no action by the legislature would continue the status quo until June 30, 2009, the legislature would be wise to do something to prevent another dust-up like that of 2006-07.

Some legal experts say the Tennessee Plan is unconstitutional and should be tossed in favor of direct elections. That would be a step backward. Wide-open, costly elections in states that still elect high court justices have demonstrated the weakness of the direct election method, producing judges who survive the process by incurring a huge debt to special interests.

Much preferable would be a modification to the Tennessee Plan that would make the selection process less political. That means giving the state bar an advisory role and the governor more freedom in the process.

Bredesen has made his feelings known on one aspect of the issue. He is pressing for legislation that would force the deliberations of the Tennessee Judicial Selection Commission to be open to the public.

That's a start. But the General Assembly could go much farther than that to help the Tennessee Plan produce qualified and independent justices for the state's most important judicial bodies.