

Chattanooga Times Free Press

Thursday, February 28, 2008

Panel discusses judicial selection

By: Brian Lazenby

The process Tennessee has used since 1971 to select appellate court judges and Supreme Court justices may be unconstitutional, according to some members of a panel of legal experts who discussed the issue here Wednesday.

However, U.S. District Court Judge Harry S. "Sandy" Mattice, who moderated the event, said the Tennessee General Assembly must decide whether to extend the current practice or develop an alternative before the two nominating commissions expire June 30.

Brian T. Fitzpatrick, an associate professor of law at Vanderbilt University, said the current system, called the Tennessee Plan, calls for committees made up primarily of attorneys to interview prospective candidates and provide names to the governor, who appoints one of those people to the vacant judgeship.

Drew Johnson, president of the Tennessee Public Policy Forum, said the process should be decided by Tennessee voters.

"Right now, the way judges are selected in Tennessee is unconstitutional," he said.

Chattanooga attorney Ronnie Berke, who is a member of the judicial selection committee, said the current process removes judges from partisan politics and prevents special interests from dictating the outcome of judicial elections.

But Brian T. Fitzpatrick, an associate law professor at Vanderbilt University, said the current system in which a panel of lawyers decides what judicial candidate will be considered allows more room for political influence.

"I don't buy that the judicial selection process removes politics," Mr. Fitzpatrick said. "These are lawyers, and lawyers have political views just like everybody else."

He said if the General Assembly does not take any action on the issue by June 30, the current system will continue in a one-year "wind-down period," but something must happen by the summer of 2009.

If nothing is done by then, Mr. Fitzpatrick said, he believes the Tennessee Supreme Court will correct the constitutionality issue.

"It is very likely that the courts will say return to contested elections," he said.