

June 24, 2007

Tennessee Voices

There is a better way to pick top judges for Tennessee bench

Joseph A. "Woody" Woodruff, a Nashville attorney, is a partner with Waller Lansden Dortch and Davis. E-mail: joseph.woodruff@wallerlaw.com

Tennessee's process for filling judicial vacancies needs a serious overhaul. The current Judicial Selection Commission is mired in special-interest politics. The dysfunction surrounding the efforts to fill the most recent vacancy on our state's highest court ultimately led to a lawsuit between the governor and the commission while the Supreme Court had to operate for months with an unfilled vacancy.

Many critics of the current system call for doing away with the commission and having statewide direct elections for appellate judges. But former state Attorney General Paul Summers argued strongly against the election of appellate judges on the op-ed page of the June 10 {dcidc}Tennessean.

Critics argue that the current system deprives the voters of any meaningful participation in the process of selecting the most important members of the judicial branch of government. They say the state constitution requires that judges be "elected" and that a system that allows incumbents to remain in office without facing a statewide contested campaign is not an election.

Summers countered by pointing out that appellate judges are not politicians who run for office on a platform of promised action; they are judges who are required to subordinate their personal policy preferences to the rule of law.

In a debate on this topic, he pointed out that the state constitution is silent on what qualifies as an "election" and says nothing about selecting judges on the Courts of Appeals.

Despite Gov. Phil Bredesen's recent appointment of Justice William Koch, a highly qualified Court of Appeals judge to fill the vacancy on the Supreme Court, this argument is not going away anytime soon. Unfortunately, the debate has yet to come to grips with the current system's central problem: the Judicial Selection Commission itself.

Currently, a total of 17 commissioners appointed by the speaker of the House and lieutenant governor serve six-year terms. These commissioners are selected from lists submitted by organizations including the Tennessee Trial Lawyers Association, the Tennessee Association of Criminal Defense Lawyers and the Tennessee Defense Lawyers Association.

Each of these organizations has one or more lobbyists on Capitol Hill, and each one has an agenda with respect to what the laws of the state ought to be.

Tennessee has 31 judicial districts. Even if no two commissioners were from the same judicial district, almost half of all judicial districts would have no representation on the commission. The overwhelming majority of Tennesseans have no vote and no voice in determining who serves as the gatekeepers for the third branch of state government.

The metaphor about foxes guarding the henhouse is not an unfair one to apply to the current system.

Rather than substituting the free-for-all of partisan election campaigns for a system that is intended to screen candidates for qualifications and merit, the governor and General Assembly should focus on comprehensively overhauling the process by which the members of the Judicial Selection Commission are appointed. Toward that end, I offer the following proposal:

- * Increase the number of commissioners to 31.

- * Allocate each judicial district one seat on the commission, and vest the power to appoint a commissioner in the elected circuit and chancery judges, the district attorney and the public defender in each district.

- * Organize the 31 members of the selection commission into three panels corresponding to Tennessee's three grand divisions and the sections of the Courts of Appeals and Criminal Appeals. Applicants for vacancies in the trial and appellate courts would be reviewed and recommended to the governor by the commission panel that covers the judicial district or section where the vacancy exists. Applicants for vacancies on the state Supreme Court would be reviewed by the full 31-member commission.

In all other respects, the job of the Judicial Selection Commission would remain the same as it is today.

This approach would guarantee that the Judicial Selection Commission would reflect the geographic and political diversity of the state as a whole. Empowering the judges, district attorneys and public defenders to appoint the commissioner for their judicial districts will create a commission better able to assess the qualifications and merits of applicants in light of regional and local needs and places the power to appoint the "gatekeeper" at a level only one step removed from every voter in the state.

Cynics might argue that the legislative branch would never adopt such a reform proposal because to do so would mean taking the ability to influence the composition of the judicial branch away from powerful special interests. The General Assembly should take this opportunity to prove that the cynics are wrong, and the governor should take this opportunity to lead the way.