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Poor system of choosing judges could get worse

By *LARRY DAUGHTREY*

It takes a lawyer, and a pretty clever lawyer at that, to figure out how you get to be a judge in Tennessee.

It's a terrible, elitist system, which only looks good in comparison to the alternative, which produces a big dollar special interest brawl over who gets to wear the black robe in a courtroom.

Both the Democratic governor of Tennessee, Phil Bredesen, and the Republican lieutenant governor, Ron Ramsey, want to reform the system. A royal mess probably will result if the legislature does nothing, which is what our legislature does best.

When a vacancy on the bench occurs now, a little-known group of 17 people called the Judicial Selection Commission meets at some out-of-the-way hotel and looks over voluminous information on those who apply for the job.

Then they close the doors to the public and argue among themselves. Weird things sometimes happen, although how we can't know precisely. Then they emerge and send three names to the governor, who picks one.

Bredesen hasn't been bashful about criticizing the Selection Commission. He says that often the three names submitted don't give him an opportunity to put more women and African-Americans on the bench, and he is dead right about that. He has tried, and failed so far, to outlaw the secret meetings.

Members of the Selection Commission are appointed by the lieutenant governor and the speaker of the House. But they must choose from a list submitted by organizations representing trial lawyers, defense lawyers and district attorneys. Only three of 17 are non-lawyers.

Ramsey says that limits his ability to achieve some geographical and political diversity on the commission, and he is dead right about that. Ramsey also claims greater diversity would produce more conservative judges.

Naturally, the special interests who control the pipeline onto the commission are defending the status quo, including the right to meet in secret. They insist on shielding the intimate details of financial, medical and ethical matters of judges, who will decide on the financial, medical and ethical problems of ordinary citizens.

The system has other critics from all directions.

After members of the Supreme Court or Court of Appeals are appointed, they appear on a ballot for a retention election, in which the choice is yes or no on a question of whether they remain in office. In almost 40 years, only one judge has been defeated. Some critics insist a retention election does not meet the constitutional mandate that judges "shall be elected by the qualified voters of this state."

The Judicial Selection Commission is under what is known as a sunset law. If the legislature doesn't act affirmatively to extend its life every eight years, it goes away into the sunset. The commission

sunsets this July 1, although it has a year to wind down its affairs.

The House seems agreeable to extending the commission, but Ramsey has operational control of the Senate and is in no hurry to renew it without reforms.

The matter may get more serious attention next year. Or it may not.

Alternative is partisan elections

If the Judicial Selection Commission goes away, the state apparently would revert to partisan election of appellate judges. That is a prospect that makes good government advocates shudder.

In states that permit partisan elections, like Texas, Wisconsin and Mississippi, the process can be appalling. It is so bad that John Grisham has written a novel about it.

Special interests line up on each side, usually with doctors, big business and insurance companies on one, and plaintiff lawyers and unions on the other. It becomes a spending donnybrook full of misleading and negative advertising. It forces judges into the uncomfortable position — for some — of raising money from those who appear in their courts.

If ordinary citizens think justice goes to the highest bidder, they may be dead right.

Appointing judges may not be a pretty process, but buying them is downright ugly. We may be close to seeing just how ugly.
