

<http://www.commercialappeal.com/news/2008/may/05/editorials-reform-system-for-judicial-picks/>

commercialappeal.com

Editorials

[Home](#) › [Opinion](#) › Editorials

Reform Tennessee's system for judicial picks

The federal system for appointing appellate judges would work just fine for state government, too

Monday, May 5, 2008

With the legislative session winding down, lawmakers are debating whether to change the way Tennessee's Supreme Court and appellate judges are selected. Lt. Gov. Ron Ramsey has been pushing for several reforms to the so-called Tennessee Plan, while House Speaker Jimmy Naifeh has indicated he's pretty satisfied with the status quo.

Ramsey is right in calling for change. The trouble is, Ramsey's proposal wouldn't go far enough.

Under the current system, when there's a vacancy on the Supreme Court or an appellate court, the Judicial Selection Commission must screen the applicants and forward the names of three potential nominees to the governor.

The governor can reject those names and ask the commission for three more. Having done so once, though, the governor is bound to select one of the candidates from the commission's second list.

In theory, the commission's involvement is supposed to take politics out of the process. The reality can be quite different. The commissioners can have their own political agendas, but unlike the governor, they're not directly accountable to the voters.

When Supreme Court Justice Adolpho Birch retired, for example, it took 10 months of wrangling before Gov. Phil Bredesen picked a replacement. It took so long because the commission, rather than nominating several strong candidates without showing a preference for any of them, appeared to be trying to politically coerce Bredesen into picking one particular candidate.

There is a better way to handle these extremely important appointments.

In federal government, the president nominates Supreme Court justices and appellate court judges, who then must be approved by the U.S. Senate.

Allowing the governor to nominate state court judges, subject to confirmation by the state Senate, would provide public accountability and political checks and balances.

Under such a model, the commission could still have a role in recommending candidates to the governor. But the governor should have more flexibility about what to do with the commission's advice.

Such a system would also be compatible with the state's current practice of holding merit retention elections after judges have served a period of time.

In a merit retention election, voters cast "yes" or "no" votes on the question of whether a particular judge should continue to serve.

That provides some public accountability, without making the courts as politicized as they might become under a system of contested judicial elections.

Not all of Ramsey's ideas are bad.

He favors having the commission meet in public.

And he favors reducing the number of positions on the commission that must be held by lawyers. (While lawyers are the group that deals most directly with judges, our court system should reflect the interests of ordinary folks, too.)

The bottom line, though, is that the commission currently wields influence that's out of proportion to its accountability to citizens. That needs to change.