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**REVIEW & OUTLOOK****Tennessee's Trial Run***May 10, 2008; Page A10*

Making things happen can be difficult in government, so Tennessee lawmakers have a plum assignment in the coming weeks. As the clock runs down on the state's method of judicial selection, the best thing they can do is nothing at all.

Since the 1970s, Tennessee has used a modified Missouri Plan for choosing its judges, known to its proponents as "merit selection." Intended as a way to keep politics out of judicial selection, the method has instead given disproportionate influence to the state trial bar and tilted state courts leftward. The Tennessee plan is set to expire this summer, requiring it to be renewed, reformed, or left to disappear when the legislative session ends this month.

**Phil Bredesen**

Not if the trial lawyers can help it. Under the current process, nominees to the state appellate court and state supreme court are chosen by a 17-member nominating commission, of which 14 are lawyers and 12 are chosen from among five lawyer groups, including the Tennessee Association for Justice (aka the Tennessee tort lawyer lobby), the Tennessee Bar Association, the District Attorneys General Conference and the Association of Criminal Defense Lawyers. The commission selects a slate of three judges from which the Governor can pick.


Instead of diluting the influence of politics over the courts, the system has aggravated it so much that even Democratic Governor Phil Bredesen has had enough. The commission has sent him the same nominee repeatedly in an effort to shoehorn a favorite son onto the state's highest courts.

Concerned that the best candidates weren't put forward, the Governor in 2006 said he was "taken aback by the game-playing" of a commission "trying to force people down my throat."

Mr. Bredesen now says he'll veto any renewal of the plan that doesn't make fundamental changes, including opening the commission's deliberation to public view. Also leading the reformers is Senate Speaker Ron Ramsey, who has insisted that without changes he will let the Tennessee system expire. But he'll need to look both ways and maintain his resolve against an onslaught. The Tennessee Bar Association is making maintaining the current system its No. 1 legislative priority. A recent effort to reform the Missouri plan in Missouri failed amid blowback from the trial bar.

Tennessee has one advantage over Missouri: The decades-old Tennessee judicial selection plan is considered by many to be against state law. According to the state constitution, all judges must be elected by a direct vote of the people, a requirement that few consider legitimately met by Tennessee's uncontested "retention" elections. Though lawmakers proposed amending the

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constitution to make the current selection method legal, Tennessee voters rejected the amendment in 1977.

The Tennessee plan was conceived as superior to the political brawls of states that elect their judges directly. But special interests have ended up more empowered than ever in a system less transparent and accountable. Trial lawyers are running the selection process behind closed doors. Isolating courts completely from the reach of politics is a pipe dream, but keeping judges democratically accountable (through election, or nomination and confirmation) is the best way to keep the system honest and serve all citizens.

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