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## Let voters choose state's appellate judges; their only interest is in good government

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### Tennessee Voices

Should Tennessee select its appellate judges through elections, or have the governor choose them from among three names winnowed by an appointed commission?

There are good reasons to elect judges. First, as recognized in the Declaration of Independence, government derives its powers from the people. The people of Tennessee in their constitution have declared that all appellate judges "shall be elected by the qualified voters."

Second, no one who exercises power over the lives of others should be unaccountable. The great exception to this is the federal judiciary, which assures the supremacy of the federal constitution, and, therefore, is not answerable to a local constituency. In the early days of the republic, the states followed the federal practice, but soon, in reaction to rampant cronyism in the selection of judges, turned to popular election.

Under our constitutional division of powers, judges should be accountable to the law, not to the governor, the legislature, or any special interest groups. Some believe that voters cannot hold judges accountable, because they do not understand what judges should do. I have met the voters. They expect legislators to represent the interests of the people, and judges to follow the law. That is no less than the constitution demands.

The "Tennessee Plan" alternative to elections relies on an unaccountable judicial selection commission. The governor is restricted to choosing one of the three candidates offered by the commission — unless he rejects the entire list — and, therefore, he can hardly be blamed for appointing a judge who does not strictly adhere to the law. The public neither has the power to select nor the power to remove members of the commission if the names on the governor's candidate list owe more to who is on the commission than to the candidate's commitment to follow the law.

The Tennessee Plan's answer to the problem of a straying judge is the retention referendum held after the judge has taken office. In Tennessee, retention referenda virtually never remove a judge. This should be no surprise. There is no opponent with the incentive and means to call the judge's record to public attention. Incumbents are retained unless voters know a reason to remove them.

The election of judges has its flaws. Winston Churchill noted that "democracy is the worst form of government except all those other forms ..." There are legitimate concerns about the harshness and expense of elections, but the recent experience of the federal system is evidence that similar concerns plague appointment. Opponents of judicial elections often advocate removing the "politics," but commissions are subject to politics. The initial appointments are replaced with others who have a special interest in the work of that commission. The politics is inside, away from the visibility of the election process.

The real question, then, is whether we trust the voters with the constitutional function of choosing their judges. The only interest the public has is good government.