



## **Voters likely to approve judges**

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By Tom Humphrey

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NASHVILLE - Voters on Aug. 7 have an opportunity to reject Gov. Phil Bredesen's appointments of two Tennessee Supreme Court justices and five other appeals court judges, but it's a pretty safe bet they will not.

Of the 146 judicial retention elections held since the state's system for selecting top judges was established, 145 resulted in a win for the incumbent judge, according to Brian T. Fitzpatrick, an assistant professor of law at Vanderbilt University who has studied the system.

The exception came in 1996, when Supreme Court Justice Penny White was ousted after being criticized by conservative groups contending she was not supportive of the death penalty.

This year, there is once again no organized campaign against any of the judges on the ballot. But the judicial selection process has come under renewed criticism in the Legislature, where there is a chance the system could be abolished next year.

If that happens, the upcoming vote could be the last time Tennesseans simply decide "yes" or "no" on whether the state's top judges get a new term. Some think that would be appropriate.

"Our state constitution says judges shall be 'elected by the qualified voters.' What we have is not an election, not the way our constitution intends it to be," state Sen. Duane Bunch, R-Cleveland, sponsor of a failed bill to abolish the current system for picking judges.

For that reason, Bunch said, he plans to vote against retention of the judges, as he has in the past, even though knowing some are "quality people."

The two Supreme Court justices on the current ballot are William C. Koch, 60, appointed by Bredesen in June of last year, and Gary R. Wade, 60, appointed in May 2006.

Both men said in interviews that they support the present system and might not even be candidates if faced with running in partisan, contested elections.

"I think we have the absolute best method of selection of judges possible now," said Wade. "The fundraising aspect and the partisan aspect (of contested elections) implies that you would be beholden - either to your donors or your party - when it comes to issues that may come before you."

Wade, a former Sevierville mayor, acknowledges that he is a Democrat, though with multiple Republican friends and a purely non-partisan stance on the bench.

Koch declined to state a partisan preference. As a young man, he was hired by a Democratic attorney general, then went to work as legal counsel to Republican Gov. Lamar Alexander, who later appointed him to the Court of Appeals. Democrat Bredesen, in turn, appointed him to the Supreme Court seat.

"The perception is that you dance with the people who brung (sic) you, the person who appointed you," Koch said. "If people are trying to figure out who I'm dancing with at this point, I'll just let them figure it out.

"Partisan issues get parked at the door when decisions are being made (by the judges), and that's the way it should be."

Also on the ballot for a yes-no retention vote are three judges on the state Court of Appeals, which hears civil cases, and two members of the Court of Criminal Appeals, which hears criminal cases.

The Court of Appeals judges are Andy D. Bennett, 51, chief deputy attorney general until appointed last September; Richard H. Dinkins, 55, a chancellor in Nashville until appointed this January; and Steve Stafford, 52, appointed last month after prior service as a Dyer County chancellor.

The Court of Criminal Appeals judges are Camille R. McMullen, 37, an assistant U.S. attorney in West Tennessee until appointed last month to the bench, and D. Kelly Thomas Jr., 56, who previously served as a Circuit Court judge in Blount County.

All the judges, in accord with state law, filed documents that allow them to raise and spend money on campaigning. But none of them have raised or spent any money at all, according to Registry of Election Finance reports.

Bunch and Fitzpatrick, who also criticizes the current system, say that the low level of attention given the retention votes is a benefit to the judges on the ballot.

"That's part of the plan. They don't want to dialogue and debate," said Bunch. "Most voters don't understand the system, and I think the goal is to keep this thing buried so people don't notice or understand."

Fitzpatrick said that researchers have found an inclination of voters to vote yes and "stick with the status quo" when they have no real knowledge of the candidates or their qualifications. In contested races, he said, voters are effectively educated by advertising and commentary from opposing candidates.

The Judicial Evaluation Commission, created by the law that set up the current system, conducts a review of judges' activity and interviews them. The panel then issues a recommendation on whether the judge should be retained or ousted.

All judges on the ballot this year were unanimously recommended for retention by the panel. The commission has never publicly recommended rejection of a judge.

Reports have circulated in legal circles of judges receiving a negative review but then deciding not to seek re-election. Under state law, if a judge does not run, the evaluation report remains confidential.

Bunch said such evaluations have come across as a "wink-wink" situation, part of an "elitist mentality" that assures judges who go through the system will win.

Under the system, the Judicial Selection Commission - a separate panel than the evaluation commission - reviews applicants for a vacant judicial seat, then recommends three nominees to the governor. He then picks one or rejects the slate, in which case three more nominees are submitted. The governor must pick one of the second slate.

As things stand now, the Judicial Selection Commission will cease to exist on July 1, 2009. Though there is some debate on the matter, Fitzpatrick and others say that, if the commission dies, the whole system dies with it and the state would return to contested, partisan elections of top judges.

The Legislature could renew the commission's life, effectively keeping the current system. But legislators have disagreed what changes, if any, could be made part of a revived commission.

The 17-member commission is now made up mostly of lawyers who, in turn, must be recommended by various attorney organizations. The House and Senate speakers pick commission members from the lists submitted.

Bredesen said he supports the present system in general but believes commission meetings should be held in public rather than in secret sessions as now allowed. Lt. Gov. Ron Ramsey wants to revise commission membership, allowing him and the House speaker to pick whoever they want rather than being limited to lawyer organization nominees.

House Speaker Jimmy Naifeh has, on the other hand, voiced support for the system as it now stands.