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Make judicial selection accountable to public

In a recent editorial, The Jackson Sun lamented the current posture of Tennessee's method for selecting judges, commonly known as the "Tennessee Plan," now in a one-year wind down. The Sun concedes that the Tennessee Plan has "flaws," but said it helps take the politics out of judicial selection and represents a better method than direct elections.

While reasonable minds can differ on the wisdom of direct elections vs. merit selection on policy grounds, the truth is that the Tennessee Plan was enacted in 1971 in a political atmosphere after the gubernatorial election of Republican Winfield Dunn. It simply took the politics of judicial selection behind closed doors. State judges had been selected by direct election from 1853 until the enactment of the Tennessee Plan, according to a state constitutional provision. The same language remains today.

Currently, no less than five lawyer organizations, including the Tennessee Bar Association, have special privileges to nominate candidates to be members of the Judicial Selection Commission. The speaker of the House and lieutenant governor are required to select 12 of the 14 lawyer members of the commission from these groups' lists of lawyers.

Members of the Judicial Selection Commission, who are not accountable to the voters of Tennessee, have the power to restrict the number of candidates that may be considered by the governor. They act as gatekeepers. The recent litigation between the governor and the Judicial Selection Commission highlights the fact that politics continue to play a role in the current process of judicial selection.

The governor has even said that the current system is too political and needs to be reformed. The lieutenant governor and some other members of the General Assembly have proposed several reasonable reforms that should be considered by lawmakers in the next session. These reforms include making the proceedings of the Judicial Selection Commission more open, providing the lieutenant governor and speaker of the House more flexibility in appointing members to the commission and giving the governor more candidates to choose from to fill a judicial vacancy.

Other proposed reforms include turning the commission into a body that simply makes recommendations to the governor on the relative qualifications of candidates and giving the Tennessee Senate the power to vote on the governor's judicial nominees, similar to the power enjoyed by the United States Senate in the federal judicial selection system.

The old adage, "If it ain't broke, don't fix it" is not a substitute for a robust public debate on ways to improve the current system. Reforms that return power in the judicial selection process to our elected political leaders make the process more open and accountable to the citizens of Tennessee.

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