

Judicial selection process up in air

Election, evaluation panels expire June 30

By Richard Locker

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NASHVILLE -- Tennesseans would elect the 29 state appellate judges through regular contested elections, and later vote "yes" or "no" on keeping them if the state legislature doesn't renew key elements of the judicial selection law.

Lawyers on both sides of the issue presented to a legislative subcommittee Tuesday their analyses of what happens if the Judicial Selection and Judicial Evaluation commissions are allowed to expire June 30. Both cease to exist unless the legislature renews or modifies them.

At stake is how Tennesseans select their five Tennessee Supreme Court justices and 24 judges on the Courts of Appeals and Criminal Appeals. For 40 years, the judges have been retained or removed from the bench through uncontested retention referendums in which voters cast "yes" or "no" votes on each judge.

The issue now is how the judges arrive on the bench in the first place. Under the current system adopted in the early 1990s, the governor appoints all 29 appellate judges, from nominees sent by the Judicial Selection Commission.

At the next statewide election in August every other year -- and every eight years thereafter -- voters decide whether to retain them. The Evaluation Commission reviews their performance; its recommendations to retain or remove are on the ballot.

The appointment and retention process is a top agenda item for the legislative session. Many Republicans and some Democrats believe the current system violates the state constitutional requirement that "judges of the Supreme Court shall be elected by the qualified voters."

Some favor appellate judges running for office in regular contested elections with opponents. They include social conservatives angered by a state Supreme Court ruling in 2000 that the state Constitution provides even stronger abortion rights than the U.S. Supreme Court found in the federal Constitution in *Roe v. Wade*.

Some lawmakers believed that if the Judicial Selection and Judicial Evaluation commissions expire, the state would automatically return to contested election and re-election of judges. Vanderbilt University law professor Brian Fitzpatrick told the House Judiciary subcommittee his research indicates otherwise.

"I believe retention referenda would continue to be used for appellate judges in the absence of the Judicial Evaluation Commission. This would leave Tennessee with a system (of) contested elections for the initial selection of appellate judges followed by uncontested referenda for their retention," he said.

Tennessee Bar Association director Alan Ramsaur said, "With 29 positions on the ballot every eight years, asking voters to know those 29 and their 29 opponents, the General Assembly's judgment has been that contested, partisan elections are expensive, corrosive and not conducive to promoting the public trust and confidence in our system."

