

Merit selection best for picking judges

"The judge's commitment to the preservation of our rights often requires the lonely courage of a patriot."

- Chief Justice of the United States John Roberts Jr., quoting President Ronald Reagan

On Feb. 2, Georgiana Vines of the News Sentinel reported that state Sens. Randy McNally and Tim Burchett and state Reps. Bill Dunn, Harry Brooks and Ryan Haynes all supported open elections of appellate judges and discontinuing merit selection.

The Board of Governors of the Knoxville Bar Association strongly urges our legislators to reconsider their position and work toward the continuation of some form of merit selection for appellate judges.

The selection of judges is critical in ensuring that our judiciary does not fear the repercussions of deciding the difficult case and exercising the courage President Reagan described. For the last 40 years, Tennessee has used various forms of a "merit selection" process for the appointment of appellate judges.

Over the years, this process has resulted in the selection of many outstanding judges. Merit selection plays a vital role in ensuring a qualified, diversified and impartial judiciary.

Last year, the Tennessee Legislature failed to pass legislation that would continue the current merit selection process of judges. Merit selection calls for the governor to appoint judges from a list of names submitted by the Tennessee Judicial Selection Commission. After selection, voters choose whether to approve the reappointment of each judge through a yes/no retention election.

In addition, every incumbent appellate judge is evaluated by the Judicial Evaluation Commission and is placed on the ballot only if the Evaluation Commission recommends the judge should be retained. Unfortunately, some have incorrectly suggested that Tennessee's current merit selection process is unlawful or unconstitutional. That suggestion is absolutely wrong. Two separate Tennessee Special Supreme Courts have found this process to be constitutional.

Over the last several years, open elections of judges in some of our sister states have raised serious questions about whether such elections have preserved a "fair and independent" judiciary. In 2006, candidates for the chief justice of the Supreme Court of Alabama spent \$8.2 million in their collective campaigns. In 2004, the race for one seat on the Illinois Supreme Court cost \$10 million.

On March 3, the U.S. Supreme Court heard arguments on whether a West Virginia Supreme Court justice who received \$3 million in contributions to his campaign from the CEO of a company appearing before the court should have recused himself from the case. After refusing to recuse himself, that West Virginia justice cast the deciding vote in favor of the company. There can be little doubt this West Virginia case severely undermines the citizenry's faith in its judicial system.

In a 2008 Parade Magazine article, former U.S. Supreme Court Justice Sandra Day O'Connor expressed concern about the erosion of confidence in the judiciary in states with open elections: "When so much money goes into influencing the outcome of a judicial election, it is hard to have faith that we are selecting judges who are fair and impartial." In order to solve the problem, she endorsed merit selection over open elections.

Some have argued that Tennessee's trial judges are successfully selected through open elections. In Knox County, we are blessed with fair and independent judges. It has never been suggested that our local judges are beholden to persons who contribute to their campaigns.

However, local elections and statewide campaigns present vastly different circumstances. The dash for cash required to run statewide campaigns leads to the perception that money influences judicial decisions and the belief that judges are beholden to special interests.

After winning the 2004 Illinois Supreme Court race, Justice Lloyd Karmeier remarked about the \$10 million spent on the race: "That's obscene for a judicial race. ... What does it gain people? How can people have faith in the system?"

The Board of Governors of the Knoxville Bar Association strongly urges our Legislature to enact some form of merit selection that maintains the faith of our citizens in Tennessee's judicial system.

This article was written by the KBA's Board of Governors: Thomas R. Ramsey III, president; Samuel C. Doak, president-elect; Michael J. King, treasurer; Adrienne L. Anderson, immediate past president; Ursula Bailey, W. Michael Baisley, Heidi A. Barcus, Tasha C. Blakney, James M. Cornelius Jr., Wade V. Davies, Timothy C. Houser, Timothy A. Housholder, Hillary B. Jones, Gregory S. McMillan, T. Lynn Tarpay and Patty K. Wheeler.

