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## Selection by governor may be best judicial option

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### Tennessee Voices

As the legislative session winds down, the General Assembly has many important issues to resolve. No issue may be more vital than what to do about Tennessee's judges.

Tennessee's most powerful judges are currently selected in a process called "merit selection." The governor appoints judges, but he can only appoint someone nominated by a commission. Most of the commission members are required by law to come from five special lawyers' groups. The theory is that these lawyers will look only at the "merits" of judicial candidates, not their political views.

The commission is set to expire this summer and the General Assembly must decide what to do about judicial selection in the next few weeks. There are basically four choices.

The first choice is to reauthorize the current system. This is the worst option. The current system vests almost all of its power in the lawyer-dominated nominating commission. But judges make decisions that affect us all, not just lawyers, and lawyers should not dominate the process.

Moreover, it's naive to believe lawyers ignore the political views of judicial candidates. Not only are lawyers political, but the lawyers' commission may skew judicial selection to the left. My research has found that since the mid-1990s, the lawyers' commission has nominated twice as many candidates with greater allegiance to the Democratic Party (67 percent) than the Republican (33 percent).

The second choice is to return to electing judges, which Tennessee did 1853-1971. Judges are powerful public officials with discretion to make law. If judges were democratically elected, the public would have a say in what kind of laws they make. For example, the Tennessee Supreme Court decided that the state constitution protects abortion rights more than the U.S. Constitution does. This means abortion regulations in other states cannot be used here. The court also recently decided state courts cannot dismiss meritless lawsuits as quickly as federal courts can. This decision will add to the cost of doing business. These rulings were based on ambiguous laws; the court could have come out the other way, as federal courts have.

Elections certainly pose special challenges. Judges would raise money like other elected officials. This might take them away from their duties and present possible conflicts if campaign contributors appear before them. Although there may be solutions to these challenges, a majority of the General Assembly seems to be against elections. Thus, this option may be off the table.

The third choice is to retain the commission, but not have it dominated by lawyers' groups. One proposal is to allow the speakers of the General Assembly to appoint commission members freely, which would be an improvement. Relying on elected officials rather than lawyers' groups would add some of the democratic accountability of elections, without the challenges of campaign fundraising.

The fourth option is a recent proposal by Lt. Gov. Ron Ramsey. His idea is to get rid of the commission altogether and permit the governor to appoint judges freely. Of all the options still on the table, this option has the most to recommend it. Since the governor is elected statewide, giving him the power to select judges would inject much of the democratic accountability of elections without the challenges of campaign fundraising. Moreover, with no commission, there would be no concern that lawyers' groups would retain de facto control. This option is much like the federal system and federal judges are widely regarded as having a great deal of "merit" even though they're not selected by lawyers' groups.

The General Assembly has much work left to do on judicial selection. The good news is that almost any change to the current system will be an improvement.

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