

Grisham: Federal hybrid is better way to pick state judges

By Greg Grisham
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Tennessee's Supreme Court and appellate court judges are not elected nor are they appointed by the process outlined in the U.S. Constitution, used by our federal government, where the chief executive nominates and the Senate confirms.

Instead, Tennessee's judges are chosen by a process known as the Tennessee Plan. The Tennessee Plan - a modified version of Missouri's judicial selection process - requires the governor to appoint a judge from a list of nominees submitted to him by a commission of 14 lawyers and three nonlawyers. The process has come under great scrutiny because of the special role it gives a small number of lawyer organizations, and many are calling for it to end.

On June 30, it will sunset. Many in the legal community, including the Tennessee Bar Association, are calling for a continuation of the Tennessee Plan in a lightly modified form. Many of its supporters concede that the Tennessee Plan has flaws but argue that it helps take the politics out of judicial selection and relies on lawyers who are better qualified to evaluate candidates for judicial vacancies than voters.

On the other hand, critics of the Tennessee Plan, including legal scholars and members of the General Assembly argue that direct election of Supreme Court justices and appellate court judges is the only selection method faithful to the Tennessee Constitution and that the Tennessee Plan gives lawyers too much influence over the composition of our courts.

Lt. Gov. Ron Ramsey appears to agree with this assessment, telling a reporter recently that it "is a stretch at best" to argue that the current process is constitutional.

While reasonable people can agree to disagree on the wisdom of direct elections versus other judicial selection methods, one thing we should agree on is that to improve the process is to limit the influence of special-interest groups. Currently, no less than five lawyer organizations have special privileges to nominate candidates to be members of the commission that nominates judges. The 17 members of the nominating commission are not accountable to the voters of Tennessee nor are the lawyers who nominate them.

There are a number of bills pending in the General Assembly that offer sound alternatives to the current process, including a bill sponsored by Sen. Mark Norris, R-Collierville, and Rep. Jon Lundberg, R-Bristol, (HB2141) that would create a federal hybrid model for the selection of appellate judges. According to recent reports, Ramsey favors legislation that "would allow the governor to make appointments to the state Supreme Court and courts of appeal without reinstituting a Judicial Selection Commission." He also wants to amend the state Constitution to ensure that the method of judicial selection followed is consistent with the Constitution.

The Ramsey Plan offers a real opportunity for sensible compromise that would improve the process for selecting appellate judges in our state. Because it would take the place of the current Tennessee Plan, the Ramsey Plan avoids the uncertainty of what would happen if the Tennessee Plan were merely allowed to sunset without an alternative in place. Additionally, it avoids the concerns of those who believe direct judicial elections permit special-interest groups to bankroll candidates and improperly influence jurists who are supposed to be impartial and independent in their application of the law.

However, the Ramsey Plan also offers something for those who oppose the current system. It would take away the gate-keeping ability of a lawyer-dominated commission and ensure that the power to appoint appellate judges is made in public by someone who is ultimately accountable to the voters of Tennessee.

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