

TENNESSEANS for FAIR & IMPARTIAL COURTS

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Dear

Starting in 1971, Tennessee began developing a merit selection and retention system for placing qualified individuals on the appellate bench. This "Tennessee Plan" for selecting members of the Supreme Court, Court of Appeals, and Court of Criminal Appeals serves our state well and helps ensure the fairness and quality of our court system.

Recently, however, there has been an effort to replace our merit based system with state-wide partisan elections. Such elections would lead to multi-million dollar campaigns driven by political agendas and special interests. Moreover, these campaigns would cast a cloud of bias over our judicial system. Partisan elections create the perception that campaign contributions and political pressure influence the outcome of judicial decisions. We believe that Tennesseans should never have to wonder whether they lost a case because they failed to make a campaign donation.

To respond to this challenge, we have joined together with other business, legal, and civic leaders from across the state to form Tennesseans for Fair and Impartial Courts (TFIC), and we need your help.

You do not have to look far to observe the corrosive effect partisan elections can have on judicial conduct and the public's perception of the legal system. In 2008, an election for a seat on Alabama's Supreme Court led to a \$5 million campaign with vicious attack ads that resulted in both candidates having to appear before the state Judicial Campaign Oversight Board. In West Virginia, a state Supreme Court justice refused to disqualify himself from a case involving a company that had given more than \$3 million to his election campaign. The justice was later admonished by the United States Supreme Court in *Caperton v. Massey*. In Texas, partisan elections have so eroded public confidence

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in the state's judiciary that the Chief Justice of the Texas Supreme Court has recommended the state replace its judicial elections with a merit selection system similar to the Tennessee Plan.

Lobbying groups are now trying to bring these partisan judicial elections to Tennessee. In 2009, those in favor of partisan judicial elections nearly prevented the renewal of the Tennessee Plan in the General Assembly. In 2010, the General Assembly failed to renew the Judicial Council, an important element of the merit selection system. Currently, interest groups are lobbying to present resolutions during the 2011 General Assembly to place the issue of partisan judicial elections on the ballot in 2014.

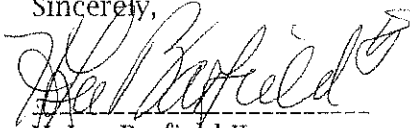
TFIC believes that judges in Tennessee should continue to be selected based on their ability to fairly apply the law, and not based on their ability to raise millions on campaign donations and curry favor with interest groups. TFIC is a non-profit, Section 501(c)(4) organization comprised of Democrats, Republicans, and Independents who understand that politics should be left to politicians, not judges. Our goal is to educate the public and members of the General Assembly about the importance of maintaining an independent judiciary through Tennessee's merit selection and retention system. To do this, we need your support.

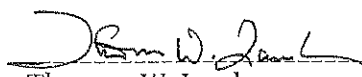
Contributions are welcome, and essential. Although donations of any amount are accepted, we would ask for a donation of \$1,500 dollars (based on the size of your firm) to support our cause. Checks may be made payable to TFIC, and sent to the following address:

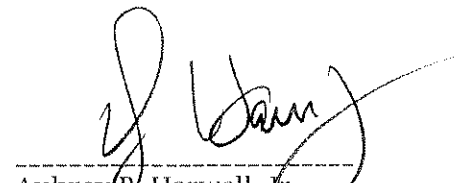
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150 Third Avenue South, Suite 2800
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If you have questions or require further discussion, please contact one of us or our Executive Director Jay Harbison at tfic.faircourts@gmail.com.

Sincerely,


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Attached hereto is a letter, from the Board of Directors of Tennesseans for Fair and Impartial Courts, sent on 10th DECEMBER 2010 which, regardless of its intent, appears to be a "shakedown" of lawyers and their clients to raise funds, lobby with the Legislature and ask the public to support the Retention-Election system so that Appellate Judges can run for re-election without opposition and be appointed in lieu of an election which is blatantly unconstitutional. The Statutes that authorizes it is 17-4-112(a), 17-4-11, which statutes are in violation of the TN Constitution Article VII Section 5, applicable to both the full term and the unexpired terms.

I am astonished that these prominent lawyers and Judges would send letters to lawyers, many of whom who have pending cases before the Appellate Courts, ripe for decisions, asking lawyers, for what could appear to be "bribes" for the benefit of Appellate Judges.

Below are the provisions to which I refer:

Tennessee Constitution Article VII § 5

Sec. 5. Judicial and civil officers — Elections ---Vacancies. —

Elections for Judicial and other civil officers shall be held on the first Thursday in August, one thousand eight hundred and seventy, and forever thereafter on the first Thursday in August next preceding the expiration of their respective terms of service. The term of each officer so elected shall be computed from the first day of September next succeeding his election. The term of office of the Governor and of other executive officers shall be computed from the fifteenth of January next after the election of the Governor. No appointment or election to fill a vacancy shall be made for a period extending beyond the unexpired term. Every officer shall hold his office until his successor is elected or appointed, and qualified. No special election shall be held to fill a vacancy in the office of Judge or District Attorney, but at the time herein fixed for the biennial election of civil officers; and such vacancy shall be filled at the next Biennial election recurring more than thirty days after the vacancy occurs. (for emphasis underline added)

**TCA 17-4-112 Judicial appointments from nominees from commission –
Expiration of terms –**

Judicial appointments from nominees from commission-expiration of terms-
(A)(1) When a vacancy occurs in the office of an appellate court after July 1, 2009, by death, resignation or otherwise, **the Governor shall fill the vacancy by appointing one (1)** of the three (3) persons nominated by the Judicial Nominating commission, ...

TCA 17-4-116. Failure to seek reelection — Nomination and appointment subject to election — Exception — Rejection of candidate — Appointment. —

(a) If an incumbent appellate court judge, whether appointed or elected, fails to file a declaration of candidacy for election to an unexpired term or to a full eight-year term within the prescribed time, or if the judge withdraws as a candidate after receiving a recommendation “for retention” from the judicial performance evaluation commission and filing the required declaration of candidacy, then a vacancy is created in the office upon expiration of the incumbents term effective September 1. In this event, the vacancy shall be filled by the governor in accordance with § 17-4-112 or § 17-4-113. The appointment is subject to the action of the electorate in the next regular August election. The appointee shall file a declaration of candidacy and be voted on as provided in § 17-4-114 and § 17-4-115.

It is perplexing that sophisticated lawyers and Judges aware of the need for full disclosure in fund raising would fail to advise the contributors that the constitutionality of the Act was debated in the 2009 TN General Assembly and continues to be widely discussed and its constitutionality is subject to attack before the Courts under the due process clauses.

In summary it is obvious from a reading of Article VII § 5 that Judges for both the eight year full term and any unexpired term must be elected and it is likewise obvious from reading TCA 17-4-112(a) that these provisions substitute appointments by the Governor for elections “by the qualified voters” under Article VI §§ 3 & 4 and consequently TCA 17-4-112, and 17-4-116 are both unconstitutional and any contributor should be advised of the debate regarding the constitutionality of the Act.

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