

TENNESSEE LWV MERIT-BASED JUDICIAL SELECTION

The League supports retention of the Tennessee Plan or an equivalent process for the selection of appellate judges based upon professional qualifications and merit. The TN Plan results in both a qualified appellate bench *and* judges who are accountable to the citizens through retention elections. Citizens vote in retention elections following initial appointment *and* at the end of each term based upon extensive judicial performance evaluations.

- **The TN Plan promotes an appellate bench that is fair, competent, impartial, and independent.** It is in the best interest of TN citizens and businesses that appellate judges act independently, making decisions consistent with the rule of law without concern for the day-to-day whims of politics or public opinion -- a critical feature of our constitutional democracy and its fundamental principle of separation of powers.
- **There is broad citizen support for merit retention elections.** Nationwide, citizens and business leaders are increasingly concerned that judicial decisions are being influenced by skyrocketing campaign contributions and special interest involvement in contested, partisan judicial elections. Studies show that more than 70% of the publicⁱ and 90% of business leadersⁱⁱ are concerned that judges are influenced by campaign contributions. In a nationwide survey, 71% of voters supported a general merit-selection and retention proposal.ⁱⁱⁱ
- **The TN Plan is a fair, constitutional method of selecting, electing, evaluating and retaining appellate judges.** The Tennessee Constitution grants to the General Assembly the responsibility for prescribing the method of electing judges. The General Assembly's choice of merit retention elections is a constitutional option.^{iv}
- **The TN Plan has operated successfully for nearly 40 years.** The Plan was adopted in 1971 with broad *bipartisan* support. It satisfies the desire for public accountability while shielding appellate judges from undue political influence. It is a proven, well-established process, and over the past 10 years, the percentage of Tennessee voters participating in merit retention elections has been increasing (now about 75% of voters).^v It enhances the prestige and respect for our appellate courts and there is no reason to move away from the Plan now.
- **The General Assembly must act by June 2009.** If no action is taken, the Plan will cease to operate with the potential for serious disruption to the court system statewide. Commentators disagree as to whether there would be any lawful process for filling judicial vacancies, and costly litigation undoubtedly will result - - *at the public's expense!*

ACT NOW TO PRESERVE TENNESSEE'S PROVEN PROCESS FOR ENSURING A QUALIFIED AND ACCOUNTABLE APPELLATE BENCH!

ⁱ Univ. of Missouri Earl F. Nelson Lecture (February 27, 2009), at 6 (Remarks by O'Connor, Ret. J.); *see also* Annenberg Public Policy Center, Public Understanding and Support for Courts, 2007.

ⁱⁱ *See* February 26, 2009 white paper, *Keeping Tennessee's Courts Fair and Impartial*, at 10 (“...a poll conducted in April 2007 for the Committee for Economic Development found that 90% of the business leaders surveyed were concerned that campaign contributions and political pressure will make judges accountable to politicians and special interest groups instead of the law and the Constitution.”)

ⁱⁱⁱ *See* Justice at Stake Campaign, National Survey of American Voters, 7 (2001), available at www.justiceatstake.org/files/JASNationalSurveyResults.pdf).

^{iv} The Tennessee Supreme Court held in *Higgins v Dunn* (1973), and subsequently reaffirmed (in *Hooker v. Thompson* (1996)), that the TN Plan is constitutional. Recently, a federal court acknowledged the same in *Johnson v. Bredesen* (U.S.D.C. M.D.Tenn.2007).

^v According to February 26, 2009 white paper, *Keeping Tennessee's Courts Fair and Impartial*, at 3, results were: 1998 election between 54%-69% voter participation; 2006 election between 73%-77%; and 2008 between 75%-78%.)