

Businesses have stake in judicial elections

Judicial elections, oft ignored by executives and managers, are of great importance to businesses. Executives will get heavily involved in the race for governor or in races for legislative seats. But they don't pay much attention to the judicial selection process. This is probably because they think it doesn't much matter who is selected.

That is wrong. Business leaders should definitely pay attention to the judicial selection process because judges control the frequency, pace and cost of litigation. They also directly affect how the law is created and interpreted.

This has a direct effect on Tennessee businesses in the interpretation of tax laws, the ability of individuals to sue businesses, the relationship between employers and employees, the interpretation of contracts and many other ways.

Which is why business leaders need to understand how the process works and then become involved. First, let's oversimplify the court system.

- The general sessions courts are the first level. They handle traffic citations, low-level criminal proceedings and relatively small claims for damages. For the day-to-day administration of the legal system, these are the most important courts.

- Then there are the "courts of record" or trial courts. There are 33 criminal court judges and 85 circuit court judges. Criminal court judges handle, well, criminal matters, while circuit court judges handle both criminal and civil matters.

- Chancery courts handle civil matters only and are very important because they tend to be able to move faster than the circuit courts.

There are 34 chancellors, four in Davidson County alone. They have broad discretion to control the pace and complexity of litigation, which in turn directly affects the expense of the process and the amount for which cases settle.

- Then there are the criminal and civil courts of appeals. There are 12 judges on both courts, and most business people couldn't name a single one.

These courts exist primarily to review decisions of the courts below them to be sure they are consistent



GUEST COMMENTARY

ZAN BLUE

with the law and not way out of line on the facts.

- Then there is the Tennessee Supreme Court, whose five judges get to pick which cases they want to decide. They pick cases presenting important questions of law that are unsettled.

Tennessee judges are both appointed and elected. When there is vacancy on the bench, the Judicial Selection Commission presents the governor with a list of three names. The governor then appoints one of the candidates to the bench. That is the appointment part.

Then comes the election part. Every eight years, we elect our general sessions and trial court judges in head-to-

'Tennessee's business leaders should learn about the process and the candidates.'

head elections. In practice, candidates rarely challenge sitting judges, so the election takes place when someone chooses to leave the bench — often because they can't afford to stay with the inadequate pay provided.

Our appellate court judges stand for "retention," meaning the voters decide whether to keep the judge in office. Every eight years, all the judges stand for elections, and 2006 is one of those years.

Judicial elections are very different from regular elections. First, under the judicial ethical code, judges are restricted in what they can say about issues likely to appear before the court.

Second, most business people don't know much about the legal system,

and they like it that way because they think the only time the legal system affects them is when they are suing or getting sued. Most business people don't want to sue or be sued.

Third, the general public knows even less about the legal system than the business people and are even less able to make informed choices in judicial elections than regular elections.

Tennessee's business leaders should learn about the process and the candidates. We should ask questions of the candidates about their judicial philosophy, what they intend to do to streamline the judicial process, simplify litigation and get cases that need to be tried to trial without spending a fortune on pretrial discovery and procedural wrangling.

We should ask what they plan to do to work for consistency in decision-making and have clear legal rules so people can make decisions with confidence the rules will be simple and clear.

The answers you will get at first are, "All I will commit to is to work hard and apply the law fairly." That means they either haven't thought about the questions, or don't think you will like the answers.

No candidate should be pressed to state a position on issues that might come before the court and no candidate should be asked about the hot button issues of politics. They can't answer and they shouldn't. But they can explain how they will make the legal system better.

Educating the public about the legal system is one of the most important ways lawyers and judges can help improve the system. The American legal system is far from perfect. But it is better than any other country's systems.

Ask a lawyer you know about the candidates. Ask the candidates. Ask your friends in the media when they are going to run profiles of the judges with interviews asking proper questions.

As a state, we have chosen to use elections to select our judges, for good or ill. So, we should have voters who are reasonably well informed. Let's get to work.

Zan Blue is the managing member of the Nashville office of Constangy Brooks & Smith. ■ www.constangy.com