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Opinion No. 13-12

Amendment to Tennessee Constitution Relative to Appellate Judges

QUESTION

Whether Senate Joint Resolution 0002 of the 108th Tennessee General Assembly (hereinafter "SJR2") conflicts with any provision of the Tennessee Constitution, specifically article VI, sections 1 and 4, and article VII, sections 4 and 5?

OPINION

SJR2 sets out new, detailed constitutional provisions in clear and unambiguous language governing the appointment of appellate judges to full and partial terms of office and subsequent retention elections. The language does not conflict with any other constitutional provisions.

ANALYSIS

SJR2 proposes to amend article VI, section 3 of the Tennessee Constitution relating to judges of the appellate courts by deleting the first and second sentence of article VI, section 3 and inserting the following new language:

> Judges of the Supreme Court or any intermediate appellate court shall be appointed for a full term or to fill a vacancy by and at the discretion of the governor; shall be confirmed by the Legislature; and thereafter, shall be elected in a retention election by the qualified voters of the state. Confirmation by default occurs if the Legislature fails to reject an appointee within sixty calendar days of either the date of appointment, if made during the annual legislative session, or the convening date of the next annual legislative session, if made out of session. The Legislature is authorized to prescribe such provisions as may be necessary to carry out Sections two and three of this article.

Article VI, section 3 currently states:

> The Judges of the Supreme Court shall be elected by the qualified voters of the State. The Legislature shall have power to prescribe such rules as may be

necessary to carry out the provisions of section two of this article. Every Judge of the Supreme Court shall be thirty-five years of age, and shall before his election have been a resident of the State for five years. His term of service shall be eight years.

Article VI, sections 1 and 4 of the Tennessee Constitution state:

[Section 1] The judicial power of this State shall be vested in one Supreme Court and in such Circuit, Chancery and other inferior Courts as the Legislature shall from time to time, ordain and establish; in the Judges thereof, and in Justices of the Peace. The Legislature may also vest such jurisdiction in Corporation Courts as may be deemed necessary. Courts to be holden by Justices of the Peace may also be established.

. . . .

[Section 4] The Judges of the Circuit and Chancery Courts, and of other inferior Courts, shall be elected by the qualified voters of the district or circuit to which they are to be assigned. Every Judge of such Courts shall be thirty years of age, and shall before his election, have been a resident of the State for five years and of the circuit or district one year. His term of service shall be eight years.

Article VII, sections 4 and 5, of the Tennessee Constitution provide:

[Section 4] The election of all officers, and the filling of all vacancies not otherwise directed or provided by this Constitution, shall be made in such manner as the Legislature shall direct.

. . . .

[Section 5] 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.

Assuming the proposed amendment to the Tennessee Constitution set forth in SJR2 is ultimately adopted by the people of Tennessee in accordance with article XI, section 3 of the Tennessee Constitution, then this amendment must be construed to give "the fullest possible effect to the intent of the Tennesseans who adopted it." *Estate of Bell v. Shelby County Health Care Corp.*, 318 S.W.3d 823, 835 (Tenn. 2010). *See also Barrett v. Tennessee Occupational Safety and Health Review Com'n*, 284 S.W.3d 794, 787 (Tenn. 2009); *Cleveland Surgery Center, L.P. v. Bradley County Memorial Hosp.*, 30 S.W.3d 278, 281-82 (Tenn. 2000). When Tennesseans exercise their right to amend their Constitution to alter their form of government, then such changes must be recognized and implemented. As the Tennessee Supreme Court has observed:

> [In a democratic republic] all power is inherent in the people, and all free governments are founded on that authority, and instituted for their peace, safety and happiness. For the advancement of these ends, they have, at all times, an unalterable and indefeasible right to alter, reform or abolish the government, in such manner as they may think proper. The principles in this country are well recognized political truths, independent of any written constitution or laws.

Ridley v. Sherbrook, 43 Tenn. 569, 574 (1866).

Furthermore, in construing the language of the Tennessee Constitution, it is well-established that the entire document must be taken into consideration and "no part so construed as to impair or destroy any other part." *Vollmer v. City of Memphis*, 792 S.W.2d 446, 448 (Tenn. 1990). Every clause of the Tennessee Constitution "should be given effect" and the "general language of one clause should not be permitted to render ineffective the express or specific provisions of another clause." *Id. See also Patterson v. Washington County*, 136 Tenn. 60, 66, 188 S.W.613, 614 (1916) (stating that no part of the Tennessee Constitution "should be given a construction which is repugnant to express authority contained in another part"). All constitutional provisions "are entitled to equal respect" and the various provisions of the Constitution should be harmonized "in order to give effect to them all." *Estate of Bell*, 318 S.W.3d at 835.

Applying these principles to the question posed, the amendment proposed by SJR2 clearly and without ambiguity states that the judges of the Supreme Court and any intermediate appellate court "shall be appointed for a full term or to fill a vacancy by and at the discretion of the governor" subject to confirmation by the General Assembly in the manner set forth by SJR2. SJR2 also expressly provides that such judges thereafter "shall be elected in a retention election by the qualified voters of the state."

The amendatory language proposed by SJR2 specifically relates to how Supreme Court and intermediate appellate judges are appointed and retained. Like the language it replaces, SJR2 does not conflict with the more general provisions of article VI, section 1, which vests the judicial power of the State in the Supreme Court and such "inferior Courts" as the legislature

may establish,[1] nor does it conflict with article VI, section 4, which sets the qualifications of inferior court judges and describes the electorate for such offices.

Similarly, SJR2 does not conflict with article VII, section 4, which delegates to the General Assembly the authority to determine the manner of electing officers and filling vacancies "not otherwise directed or provided by the Constitution." SJR2 describes how appellate vacancies will be filled and states that elections of appellate court judges for full and partial terms are accomplished by retention elections. Because SJR2 provides specific direction on appellate court elections and vacancies, the general grant of legislative authority contained in article VII, section 4 would have no application to those positions. In fact, the language of SJR2 contains its own broad grant of authority to the legislature "to prescribe such provisions as may be necessary to carry out" its terms.

Article VII, section 5 contains language related to judicial elections for full terms and to appointments and elections to fill vacancies. Nothing in the language of SJR2 conflicts with that section.

As noted above, SJR2 includes a broad grant of authority to the legislature to "prescribe such provisions" necessary to carry out the terms. This grant of authority provides the General Assembly with sufficient latitude to implement SJR2 in a manner consistent with any other applicable constitutional provision.

Finally, even if a conflict existed between the amendment proposed by SJR2 and any other part of the Tennessee constitution, the later-adopted amendment proposed by SJR2 would be controlling. *See Steinhouse v. Neal,* 723 S.W.2d 625, 627 (Tenn. 1987); *Stewart Title Guaranty Co. v. McReynolds*, 886 S.W. 2d 233, 236 (Tenn. Ct. App. 1994).

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[1] Intermediate appellate courts are an "inferior Court" and exist only if established by the General Assembly. Accordingly, SJR2 refers to judges of "any" intermediate appellate court, using language recognizing that such courts are not constitutionally required.

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