

**STATE OF TENNESSEE**

OFFICE OF THE  
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Opinion No. 13-76

Authority of Governor to Fill Judicial Vacancies

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**QUESTION**

Does the Governor have the authority to appoint a qualified person to fill a judicial vacancy that occurs after the Judicial Nominating Commission has been terminated and has wound up its affairs pursuant to Tennessee's "sunset" law?

**OPINION**

Following the enactment in 2009 of Tenn. Code Ann. § 17-4-113, the Governor has the authority to appoint any qualified person to fill a judicial office that becomes vacant after the termination and wind-down of the Judicial Nominating Commission.

**ANALYSIS**

This opinion request inquires about the Governor's authority to appoint a qualified person to fill a judicial vacancy that occurs after the Judicial Nominating Commission ("JNC") has been terminated and has wound up its activities pursuant to Tennessee's "sunset" law. The JNC was terminated by the General Assembly as of June 30, 2012, and the one-year period during which the JNC was allowed by statute to wind up its affairs ended on June 30, 2013. *See* Tenn. Code Ann. § 4-29-233 (terminating the judicial nominating commission as of June 30, 2012); Tenn. Code Ann. § 4-29-112 (authorizing a one-year time period for a terminated state entity to wind up its affairs).

The Tennessee Constitution, Article VII, Section 4, specifies that: "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." With regard to judicial vacancies, the Constitution provides in Article VII, Section 5, for the dates on which judicial elections shall be held, but otherwise the Constitution is silent on how to fill judicial vacancies. Accordingly, under the general delegation of authority contained in Article VII, Section 4, the General Assembly is charged with maintaining the continuous and efficient operation of Tennessee's judicial branch by providing a mechanism for "the filling of all [judicial] vacancies."

Pursuant to this constitutional authority, the General Assembly in 1971 enacted statutory provisions generally allowing the Governor to fill judicial vacancies from a list of nominees

selected by an appointed advisory body. *See* 1971 Tenn. Pub. Acts, ch. 198. These statutes have been amended on several occasions, including significant recent changes by 2009 Tenn. Pub. Acts, ch. 517 (“Chapter 517”), and are currently codified at Tenn. Code Ann. §§ 17-4-101 to -201.<sup>1</sup>

In 2009, Chapter 517 repealed and replaced in their entirety the code provisions related to filling judicial vacancies at both the appellate and trial level. In so doing, it introduced several changes to the process, including creating the seventeen-member JNC to review applicants for vacancies in the judiciary and to provide to the Governor a list of nominees whom the JNC selects as best qualified to fill the vacancy. *See* Tenn. Code Ann. §§ 17-4-102 to -109. Specifically, Chapter 517 gave the following duties to the JNC in filling appellate judicial vacancies:

(a)(1) If a vacancy occurs during the term of office of a judge of the court of appeals or court of criminal appeals, then the judicial nominating commission shall, at the earliest practicable date, hold a public meeting in the grand division from which the vacancy is to be filled. However, if an incumbent judge fails to file a written declaration of candidacy required by § 17-4-114 or § 17-4-115,<sup>2</sup> or if the commission is reliably informed that a vacancy is impending for another reason, then the public meeting may be held prior to the actual occurrence of the vacancy.

(2) If a vacancy occurs during the term of office of a judge of the supreme court, then the judicial nominating commission shall, at the earliest practicable date, hold a public meeting in Nashville. However, if an incumbent judge fails to file a written declaration of candidacy as required by § 17-4-114 or § 17-4-115, or if the commission is reliably informed that a vacancy is impending for another reason, then the public meeting may be held prior to the actual occurrence of the vacancy.

....

(e) As soon as practicable, and no later than sixty (60) days from receipt of written notice from the governor that a vacancy has occurred, the commission, with the assent of a majority of all the members to which it is entitled under § 17-4-102(a), shall select three (3) persons whom the commission deems best qualified and available to fill the vacancy and shall certify the names of the three (3) persons to the governor as nominees for the judicial vacancy. However, if an incumbent judge fails to file a written declaration of candidacy as required by §

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<sup>1</sup> The use of a panel to assist the Governor in filling judicial vacancies originated in 1971 with the creation of the Appellate Court Nominating Commission. 1971 Tenn. Pub. Acts, ch. 198, § 2. The panel’s composition has been changed by the General Assembly several times since 1971, with substantial revisions occurring in 1994 and 2009, *see* 1994 Tenn. Pub. Acts, ch. 942, § 2 (creating the Judicial Selection Commission); 2009 Tenn. Pub. Acts 517, § 1 (creating the JNC), although the panel has continued to perform essentially the same duties in each iteration. *Compare* Tenn. Code Ann. § 17-4-102 (2009) *with* Tenn. Code Ann. § 17-4-102 (1994 & 2008 Supp.).

<sup>2</sup> If an incumbent appellate judge fails to seek reelection, “then a vacancy is created in the office upon the expiration of the incumbent’s term effective September 1.” Tenn. Code Ann. § 17-4-116(a).

17-4-114 or § 17-4-115, or if the commission is reliably informed that a vacancy is impending for any other reason, then the commission may meet, select such persons and certify the names of such nominees to the governor prior to actual receipt of written notice from the governor that a vacancy has occurred.

Tenn. Code Ann. § 17-4-109. An appellate judicial vacancy can be filled by the Governor from an initial panel of nominees received by the Governor from the JNC, or the Governor can reject the JNC's initial panel of three nominees and request a second panel of three nominees. Tenn. Code Ann. § 17-4-112(a). The Governor then, within sixty days following receipt of the additional panel, must fill the vacancy "by appointing any one (1) of the six (6) nominees certified by the commission." *Id.* Chapter 517 enacted a similar process involving the JNC for filling judicial vacancies at the trial court level, although the Governor cannot request a second panel of three nominees for a trial court vacancy. *See* Tenn. Code Ann. § 17-4-118.

The JNC created in 2009 was subject to a standard two-year "sunrise" provision, whereby it would be terminated after two years unless its existence was reauthorized. Thereafter, the JNC was "sunset" and terminated on June 30, 2012, pursuant to Tenn. Code Ann. § 4-29-233. The JNC wound up its business on June 30, 2013, in accordance with Tenn. Code Ann. § 4-29-112.

This Office previously opined that when the General Assembly terminated the Judicial Selection Commission, created by 1994 Tenn. Pub. Acts, ch. 942, through a "sunset" provision, but did not expressly repeal or effect an implied repeal of the statutory scheme for appointing judges, the General Assembly intended that the appointment process overseen by the Commission be suspended. *See* Tenn. Att'y Gen. Op. 09-43 (Mar. 26, 2009) (opining that under then-existing law judicial vacancies could not be filled by appointment following the 2009 "sunset" of the Judicial Selection Commission, as that regulatory scheme would be deemed suspended and unenforceable without further legislation being enacted). The Office has reached the same conclusion in other situations in which a "sunset" provision terminated an agency or commission.<sup>3</sup>

Unlike the statutory scheme involving the Judicial Selection Commission that was the subject of Opinion No. 09-43, Chapter 517 contained a new provision that authorized the Governor to appoint any qualified person to a judgeship in the event that the JNC failed to act in

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<sup>3</sup> *See, e.g.*, Tenn. Att'y Gen. Op. 98-045 (Feb. 17, 1998) (opining that the effect of terminating the Tennessee State Racing Commission under the "sunset" laws, without the General Assembly transferring the commission's regulatory functions, is that the General Assembly intended to terminate the legalization of pari-mutuel betting under the Racing Control Act); Tenn. Att'y Gen. Op. 91-38 (Apr. 26, 1991) (opining that by terminating the Health Facilities Commission under the "sunset" law, the General Assembly intended to terminate or suspend the regulatory process by which that commission administered the certificate of need program); Tenn. Att'y Gen. Op. 82-1 (Jan. 5, 1982) (concluding that the effect of the termination of the Public Service Commission ("PSC") under the "sunset" laws, if there was no legislation transferring the jurisdiction of the PSC to another entity, would be that those industries being regulated by the PSC would no longer be subject to regulation with regard to purely intrastate commerce). In Tenn. Att'y Gen. Op. 95-45 (May 1, 1995), this Office revisited its opinion in Tenn. Att'y Gen. Op. 82-1 and adhered to the 1982 opinion's conclusion that if the PSC were terminated by the "sunset" law without any legislation transferring its functions to another entity, then those utilities regulated by the PSC would not be subject to regulation by the State.

a timely manner.<sup>4</sup> Specifically, Section 1 of Chapter 517, codified at Tenn. Code Ann. § 17-4-113, provides as follows:

(a) If the judicial nominating commission does not furnish a list of three (3) nominees to the governor within sixty (60) days after receipt of written notice from the governor that a vacancy has occurred, then the governor may fill the vacancy by appointing any person who is duly licensed to practice in this state and who is fully qualified under the constitution and statutes of this state to fill the office.

(b) The term of a judge appointed under this section shall expire on August 31 after the next regular August election occurring more than thirty (30) days after the vacancy occurs.<sup>5</sup>

This “failsafe” provision allows the Governor to fill a judicial vacancy if the JNC “does not furnish a list of three (3) nominees to the governor within sixty (60) days after receipt of written notice from the governor that a vacancy has occurred.” Tenn. Code Ann. § 17-4-113(a).

The JNC’s nominating function implements the General Assembly’s intent “to assist the governor in finding and appointing the best qualified persons available for service” on the courts. Tenn. Code Ann. § 17-4-101(1). By also enacting the failsafe provision of Tenn. Code Ann. § 17-4-113, which allows the Governor to fill vacancies in the absence of such nominations, the General Assembly evidenced a separate intent to ensure that judicial vacancies are filled in a timely manner and recognized that the need for a functioning judiciary carries a greater priority than the JNC’s advisory role. This conclusion is consistent with the General Assembly’s constitutional responsibility under Article VII, Section 4, to ensure the continuous existence of a competent and effective judiciary.<sup>6</sup>

Under Tennessee law, courts should avoid a statutory construction that “would work to the prejudice of the public interest” or that “impairs, frustrates or defeats the object of a statute.”

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<sup>4</sup> The General Assembly passed 2009 Tenn. Pub. Acts, ch. 517, on June 12, 2009, to be effective on July 1, 2009. As appointments to fill judicial vacancies are now subject to new procedures enacted after the issuance of Opinion No. 09-43 on March 26, 2009, the applicability of that opinion to evaluating the legal effect of terminating the JNC requires additional review.

<sup>5</sup> The judicial selection process originally enacted in 1971 contained a provision similar to Tenn. Code Ann. § 17-4-113(a). *See* Tenn. Code Ann. § 17-4-113 (1994), *repealed by* 1994 Tenn. Pub. Acts, ch. 942, § 15. *See also* 1971 Tenn. Pub. Acts, ch. 198, § 13 *as amended by* 1986 Tenn. Pub. Acts, ch. 624, § 5. This statute provided that “[i]f the nominating commission does not furnish a list of three (3) nominees to the governor within sixty (60) days after written notice from the governor that a vacancy has occurred, the governor may appoint any qualified licensed attorney to the vacancy.” Tenn. Code Ann. § 17-4-113 (1994). This provision was repealed by the General Assembly in 1994. 1994 Tenn. Pub. Acts, ch. 942, § 15.

<sup>6</sup> In his opening remarks on the Senate floor presenting Senate Bill 1573, subsequently enacted as 2009 Tenn. Pub. Acts, ch. 517, Senate Majority Leader Mark Norris stated that “we’re all concerned about making sure that we don’t do anything that will harm the judicial system or the proper administration of justice as we go forward.” <http://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=SB1573&ga=106> (video clips) (Senate Session – 35th Legislative Day, May 28, 2009) (at approximately counter 00:48:25-00:48:37).

*State ex rel. Maner v. Leech*, 588 S.W.2d 534, 540 (Tenn. 1979). See also *Tidwell v. Collins*, 522 S.W.2d 674, 676 (Tenn. 1975) (same); *Burns v. Duncan*, 133 S.W.2d 1000, 1007-08 (Tenn. Ct. App. 1939) (noting that “consequences cannot alter statutes, but may help to fix their meaning”). Consistent with this directive, with the legislative priorities contained within the statutory language and with the General Assembly’s constitutional obligation to sustain the ongoing operation of the judicial branch, it would be logical to read the language of Tenn. Code Ann. § 17-4-113 to empower the Governor to fill judicial vacancies in all circumstances in which the JNC fails to act, including when the JNC has been terminated and therefore cannot act.<sup>7</sup>

Even if a court concluded that the language of Tenn. Code Ann. § 17-4-113 is unclear on this question, the legislative history of Chapter 517 shows that the General Assembly adopted Tenn. Code Ann. § 17-4-113 in part to avoid the situation in which no authority would exist to fill judicial vacancies after the “sunset” and windup of the Judicial Selection Commission. Where the plain language of a statute does not resolve an issue, courts will consider the history and purpose of legislation in order to ascertain legislative intent. See, e.g., *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010); *In re C.K.G.*, 173 S.W.3d 714, 724 (Tenn. 2005).<sup>8</sup>

When Chapter 517 was being debated on the Senate floor during its third and final reading, Senator Dewayne Bunch proposed Senate Amendment Number 11. (A transcription of the colloquy on the Senate floor related to Senate Amendment Number 11 is attached as an appendix to this Opinion.) Senator Bunch’s amendment would have provided that Tenn. Code Ann. § 17-1-301 (dealing generally with judicial vacancies) be amended to specify at the end of subsections (a), (b), and (c) that:

However, if for any reason the judicial nominating commission is clearly unable to fulfill its statutory duty to submit a panel of nominees to the governor for consideration, then the governor shall proceed to appoint a person, who is licensed to practice law in this state and who is fully qualified under the constitution and statutes of this state, to discharge the duties of the office.

Amendment 11 to SB1573 (withdrawn May 28, 2009), located at <http://www.capitol.tn.gov/Bills/106/Amend/SA0632.pdf>. Senator Bunch’s proposed amendment would have granted the Governor authority to fill a judicial vacancy if the JNC were unable to submit a panel of nominees “for any reason,” which Senator Bunch stated would include the JNC being “sunset.”

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<sup>7</sup> In such a circumstance, requiring the Governor to give notice of a vacancy to the JNC would be futile and therefore unnecessary. Compliance with an administrative agency procedure is not required or is excused when it would be useless and futile to do so. For example, traditional requirements that a person must first exhaust administrative procedures and remedies before seeking judicial review have an exception when resort to the administrative procedures is useless and futile. See, e.g., *State v. Yoakum*, 297 S.W.2d 635, 642 (Tenn. 1956) (finding that “the law will not require [a person] to exhaust an administrative remedy when to do so . . . would be a useless thing”) (cited approvingly in *Colonial Pipeline v. Morgan*, 263 S.W.3d 827, 844 (Tenn. 2008)). See also *Freeman Industries v. Eastman Chem. Co.*, 172 S.W.3d 512, 526 (Tenn. 2005) (finding that “to maintain an action for unjust enrichment, a plaintiff is not required to exhaust all remedies against the party with whom the plaintiff is in privity if the pursuit of the remedies would be futile”).

<sup>8</sup> The primary objective of statutory construction is to determine the intent of the General Assembly and give effect to that intent. See, e.g., *Graham v. Caples*, 325 S.W.3d 578, 581-82 (Tenn. 2010).

Senator Mark Norris, the Senate Majority Leader, who was presenting the bill on the Senate floor, responded to Senator Bunch's amendment by stating that the issue was already addressed in the bill by the language now codified as Tenn. Code Ann. § 17-4-113. Senator Bunch reiterated his concern that under the bill as written, if the JNC were to sunset, "we'd be in the same place we are now," and that his Amendment No. 11 was needed so that "if this were to sunset in the future, that the authority to, for the governor to appoint an interim would still exist." Senator Norris acknowledged Senator Bunch's "valid concern," recognizing that this issue "was one of several things we were trying to address by, by the wording of the, of Judiciary Amendment [No.] 1 that's before us."

Senator Bunch then stated that the goal of his amendment was as follows: "I want to be clear that if this sunsets in the future, that the authority for the governor to make an interim appointment will exist and will not be dependent upon the bill, the committee being in existence." Senator Norris responded unequivocally, "I do agree with that Senator Bunch and I have always agreed on that proposition. So if that, if it's important for that to be part of the record, that is my interpretation of what is proposed in the amendment [Judiciary Committee Amendment No. 1] that's before us."

Following an unrelated exchange, Senator Norris returned to the subject of the effect of a JNC sunset and said, "I will respond to Senator Bunch's inquiry. I agree with him that is the, that is the intent of Judiciary Amendment [No.] 1 that is before us. I agree with his concern and his analysis of that issue and I believe that it's my intention that the bill as before us as amended addresses that in the manner which he thinks it should be." In light of Senator Norris's statement, Senator Bunch withdrew his amendment, stating, "Now that the legislative record reflects that that is the intent and that is the desire and that is the goal of this legislation, I would withdraw Amendment No. 11."

Thus, as clearly set forth in the legislative history, Senator Bunch withdrew Senate Amendment Number 11 when Senator Norris made clear that language in the pending bill, which ultimately was codified as Tenn. Code Ann. § 17-4-113, authorized the Governor to appoint any qualified applicant to fill a judicial vacancy if the JNC were terminated under the "sunset" laws.

Accordingly, consistent with the General Assembly's responsibilities under Article VII, Section 4, of the Tennessee Constitution, statutory language allowing the Governor to fill judicial vacancies even absent action by the JNC, and clearly stated legislative intent to grant the Governor the power to act even if the JNC were allowed to "sunset," the provisions of Tenn. Code Ann. § 17-4-113 should be read to operate even after the JNC's termination. Under such circumstances, the Governor would have the statutory authority to appoint any qualified person to fill a judicial vacancy. As Tenn. Code Ann. § 17-4-113 governs judicial vacancies at the trial and appellate levels, the Governor would have the power to fill vacancies at both levels.

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Requested by:

The Honorable Bill Haslam  
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## APPENDIX

### Legislative History

#### SB1573, 106<sup>th</sup> Tenn. Gen. Assembly, 1st Session (Senate Floor Debate - May 28, 2009)

Senate Clerk: Item Amendment No. 11, filed timely by Senator Bunch.

Speaker Ramsey: Senator Bunch, you're recognized.

Senator Bunch: Thank you Mr. Speaker. Item No. 11 addresses the amendment that is before us. It has one simple thing that it does and I've heard and you've heard conversations say well if the judicial committee sunset, then we're going to have problems. We have an A.G.'s opinion that says that. But the thing we don't recognize is the A.G.'s opinion was crafted in one particular, to answer one question. We have a later A.G.'s opinion that says yes there is the authority to appoint judges interim to take and deal with cases. So we don't have any problems. So those of you who have bought into I'm going to support this because I fear what might happen there is nothing that's going to happen.

You know the best way for us to reconstitute this system in my mind would be to bring it back in January, but that's, that said, what this amendment does, it simply says that for any reason the judicial nominating commission is clearly unable to fulfill its statutory duty to submit a panel of nominees to the governor for consideration, then the governor shall proceed to appoint a person who is licensed to practice law in this state and who is fully qualified under the constitution and statutes of this state to discharge the duties of the office. What this does is it takes away the argument for future, that if we sunset it, or if this goes away, that there will be problems. We can cure that now. This is your opportunity to say okay, it appears that we're going to pass something out of the senate today, and this is an opportunity to put on there that in the future if this issue occurs we're not held hostage by the fear mongers. That's what the amendment does Mr. Speaker. I move adoption of Amendment 11.

Mr. Speaker: Amendment 11, moved for adoption, seconded is there a second?  
Been seconded. Discussion on Amendment number 11.  
Senator Norris.

Senator Norris: Thank you Mr. Speaker. Senator Bunch, we, the issue is addressed in, in the bill that's before us as amended which currently provides that if the judicial nominating commission does not furnish a list of three nominees to the governor within sixty days after receipt of written notice that a vacancy has occurred, then the governor may fill the vacancy by appointing any person who's duly licensed to practice in the State of Tennessee and whose fully qualified under the constitution and statutes of Tennessee to fill this office. I think it does the same thing by slightly different words. Does it not?

Speaker: Senator Bunch.

Senator Bunch: Thank you Mr. Speaker. It is my understanding that if the judicial sunset, if it were to sunset again, that this would go away. The language that I have is drafted so that if this were to sunset in the future, that the authority to, for the governor to appoint an interim would still exist. Now perhaps there's a distinction there, perhaps not. That's my understanding is that the current amendment, if the judicial select or nominating committee sunsets, we would not have the authority to appoint we'd be in the same place we are now.

Speaker: Senator Norris.

Senator Norris: Thank you. I just, for the record, I was conferring with our counsel about it because this was one of several things we were trying to address by, by the wording of the, of Judiciary Amendment 1 that's before us. It's a valid concern. In fact it's one of the reasons that I think we find ourselves here today is because we did not have a separate bill that dealt with the recodification of the, of the system the way it used to be. Would you agree Senator Bunch on that?

Speaker: Senator Bunch.

Senator Bunch: I, I'm sorry. Would you rephrase that?

Speaker: Senator Norris.

Senator Norris: During this, the whole process that I've described of trying to, to reach the right result at this point, and I know that this can differ but one of the, one

of the challenges we face is that we did not have the separate bill that you and I call the recodification that would have, that would have put us back in the absence of a judicial selection commission where we needed to be. That's, that's one of the things the drafters of the bill that's before us tried to address here and you think it could be addressed more succinctly, I take it.

Speaker: Senator Bunch.

Senator Bunch: Thank you Mr. Speaker. In reviewing this, it was my understanding that if this were to sunset, it would go along with the sunset, now if, if the sponsor's saying explicitly and clearly and it would be clear even to especially appointed Supreme Court, then I would, I'm very comfortable with that, but that's not, I want to be clear that if this sunsets in the future, that the authority for the governor to make an interim appointment will exist and will not be dependent upon the bill, the committee being in existence.

Speaker: Senator Norris.

Senator Norris: I do agree with that Senator Bunch and I have always agreed on that proposition. So if that, if it's important for that to be part of the record, that is my interpretation of what is proposed in the amendment that's before us.

Speaker: Senator Jackson.

Senator Jackson: Senator Bunch, I appreciate your amendments and the passion for which you've argued for those amendments and you've made it very clear to the people of the State of Tennessee that you interpret Article VI, Section III, that states that the judges of the Supreme Court shall be elected by the qualified voters of the state, that you take that to be a literal statement and, and you interpret that in very plain fashion. That being the case and given your belief as to the application of the constitution, how does your proposed amendment comply with Article VI, Section III of the constitution? If your amendment is providing for an appointment by a single elected official of the State, how does that comply with the mandate of the constitution that that Supreme Court justice be elected by the people of the State?

Speaker: Senator Bunch.

Senator Bunch: Thank you Mr. Speaker. It complies the same way it did for over a hundred and forty plus years. It was on the statutes. It was only removed from the code when the Tennessee Plan was passed, what, 30 years ago? It was suspended but that's always been the authority that the governor could appoint an interim. The governor wasn't appointing someone to serve in office like they do under this plan. The governor was appointing someone to serve in an interim until there could be an election, which as you know, there can't be an election at any given time. It has to be the next bi-annual election which is usually the even-numbered August of every year there would be an election. So if someone resigned in February, you'd have an interim appointed for a few months to serve so that there wouldn't be a back log and the governor would appoint them. But the governor wasn't appointing them to stay in office. It wasn't a designation that you were going to run for retention. It was simply, you're going to serve and if you want to run, you're like everyone else. You can put your qualifying papers in, see if you qualify and then you can offer yourself to the citizens. So it's very consistent, and again I go back to the question perhaps if the Bill was clear, if we're comfortable that the Bill is clear, then I will withdraw, if we're comfortable that this amendment is clear, but that's something that I want to be clear on before we go on.

Speaker: Senator Jackson still has the floor. Senator Jackson, you're recognized.

Senator Jackson: Okay, well, well Senator Bunch, I feel better then because maybe I don't understand your amendment. If the judicial selection commission has sunseted your amendment would allow the governor to appoint on an interim basis. But somewhere in your amendment you also prescribe that there shall be an election by the people I take it. That is in your amendment, that process for election.

Senator Bunch: No sir. Thank you Mr. Speaker. No sir. That is not in this amendment. This is, would be part of the Bill which currently doesn't allow for an election by the people.

Speaker: Senator Jackson.

Senator Jackson: So you're advocating with this amendment a process where there would be an appointment by the governor but not an election by the people. How long in your amendment, how long would that appointment be for? What's the prescribed period of time in your amendment that that appointment could serve on the Supreme Court?

Speaker: Senator Bunch.

Senator Bunch: Thank you Mr. Speaker. Obviously, the person would appointed would serve to the next bi-annual election so it would depend upon when that opening were to occur. It obviously cannot extend beyond two years.

Speaker: Senator Norris, you seek recognition?

Senator Norris: I will. Mr. Speaker, I will respond to Senator Bunch's inquiry. I agree with him that is the, that is the intent of Judiciary Amendment 1 that is before us. I agree with his concern and his analysis of that issue and I believe that it's my intention that the Bill as before us as amended addresses that in the manner which he thinks it should be.

Speaker: Senator Bunch.

Senator Bunch: Thank you Mr. Speaker. Now that the legislative record reflects that that is the intent and that is the desire and that is goal of this legislation, I would withdraw Amendment No. 11.

Speaker: Objection? Withdrawn.

<http://wapp.capitol.tn.gov/apps/BillInfo/default.aspx?BillNumber=SB1573&ga=106> (video clips) (Senate Session- 35<sup>th</sup> Legislative Day, May 28, 2009) (at approximately counter 01:18:10 – 01:28:30).