

TO: Interested Parties
FROM: Kellyanne Conway, President & CEO
the polling company™, inc.
DATE: February 27, 2008
RE: Key Findings from a Survey of 507 Registered Voters in Tennessee

*On behalf of **The Federalist Society, the polling company™, inc.** conducted a statewide telephone survey of 507 registered voters in Tennessee January 27-30, 2008. The main objective of the survey was to assess Tennesseans' knowledge and opinions of the process by which Justices are chosen to serve on the Tennessee State Supreme Court*

Tennesseans Admit Low Awareness of Court's Decisions and Are Unable to Identify the Method Used to Fill Vacancies on the Tennessee State Supreme Court

More than three-in-five (63%) Tennesseans disclosed that they were either "just a little bit" or "not at all familiar" with their State Supreme Court and its rulings, including a majority of men, women and voters of all ages, regions, and political self-identifications. Fewer than one-in-ten (7%) said they were "very familiar" while one-in-three (30%) judged themselves as "somewhat familiar."

The overall lack of knowledge was reaffirmed in a subsequent question when only 29% of voters could correctly identify the method by which Justices are first selected to serve on the State Supreme Court among three choices offered. In fact, 30% mistakenly believed that justices are first appointed by the Governor and confirmed by the State Legislature and one-quarter (25%) incorrectly insisted that they personally voted for the justices.

After hearing a description of the Tennessee Plan—the appointment process used to fill vacancies on that state's highest court—participants resoundingly confessed that they were unaware that "various associations of lawyers select 14 of the 17 members of the Judicial Selection Commission." By a margin greater than 6:1, participants said they did not know of the influential and sizeable role of attorneys in the process (83% aware; 15% unaware). No fewer than three-quarters of any demographic, partisan, ideological or geographic cohort said they were unfamiliar with this provision.

In subsequent questions, participants indicated their disapproval of the large role of the legal community in the selection process when only 6% of respondents said that lawyers should have the greatest input in the selection of judges, including fewer than one-in-ten self-identified Republicans, Independents, and Democrats. By contrast, 59% of those surveyed said that they personally (the voters) should have the most influence. The remaining 28% were split: 14% wanted the Governor to play the lead while 14% ceded the duty to the state legislature.

Voters Rebuff the Tennessee Plan and Any Extension of It

Because the Tennessee Plan is set to expire in the summer of 2008, voters were asked whether the state legislature should reauthorize the Plan, institute a new method of selection, or go back to elections. Voters overwhelmingly rejected any notion of keeping the Tennessee Plan, as only 16% preferred that the state legislature reauthorize it. The majority (54%) of those surveyed wanted to return to elections while 19% wanted a new method of selection. In a separate question about potential plans for Tennessee, they further reaffirmed their dissatisfaction of the current method when only 15% selected a nominating commission (the current method) as the best way for the state. On the other hand, nearly four times as many voters (58%) said that a popular vote method would be best for the state. The remaining 17% said a federal model should be implemented in Tennessee.

Statewide Survey of 507 Registered Voters in Tennessee

prepared for

The Federalist Society

by the polling company™, inc.

January 2008

Fielding Dates: January 27-30, 2008

Margin of Error = \pm 4.4 %

Introduction

- A. Are you 18 years of age or older and currently registered to vote here in Tennessee, registered in a different state, or not registered at all?

100% YES

- B. Thinking for a moment about past elections that you have been eligible to vote or participate in, would you say that you have voted in...(READ CHOICES)

58%	ALL OR ALMOST ALL ELECTIONS
27%	MOST ELECTIONS
7%	ABOUT HALF OF ALL ELECTIONS
6%	LESS THAN HALF OF ALL ELECTIONS
3%	I HAVE NEVER VOTED IN AN ELECTION

IMPRESSION OF TENNESSEE COURTS

1. How familiar would you say you are with the Tennessee State Supreme Court and its rulings and decisions? Are you... (READ AND ROTATED TOP TO BOTTOM AND BOTTOM TO TOP)

37% TOTAL FAMILIAR (NET)

7% VERY FAMILIAR
30% SOMEWHAT FAMILIAR

63% TOTAL UNFAMILIAR (NET)

33% JUST A LITTLE BIT FAMILIAR
30% NOT AT ALL FAMILIAR

* DO NOT KNOW (VOLUNTEERED)
- REFUSED (VOLUNTEERED)

2. Which of the following do you think best describes how Justices are **first** chosen to serve on the Tennessee Supreme Court? [READ AND ROTATED]

30% JUSTICES ARE APPOINTED BY THE GOVERNOR OF TENNESSEE AND
CONFIRMED BY THE LEGISLATURE
29% JUSTICES ARE NOMINATED BY A JUDICIAL SELECTION COMMISSION
AND APPOINTED BY THE GOVERNOR
25% JUSTICES ARE ELECTED BY THE VOTERS OF TENNESSEE
1% OTHER (VOLUNTEERED)
15% DO NOT KNOW (VOLUNTEERED)
* REFUSED (VOLUNTEERED)

3. Who do you think **should** have the greatest input on who is selected to serve as a Justice on the Tennessee State Supreme Court? (READ AND ROTATED, ACCEPTED ONLY ONE RESPONSE)

59% TENNESSEE VOTERS
14% TENNESSEE STATE LEGISLATURE
14% TENNESSEE GOVERNOR
6% TENNESSEE LAWYERS
1% OTHER (VOLUNTEERED)
1% ALL OF THE ABOVE (VOLUNTEERED)
* NONE OF THE ABOVE (VOLUNTEERED)
4% DO NOT KNOW (VOLUNTEERED)
* REFUSED (VOLUNTEERED)

TENNESSEE SUPREME COURT APPOINTMENT

As you may know, there are five Justices on the Tennessee Supreme Court who are appointed by a process known as the “Tennessee Plan.” Under this Plan, a Judicial Selection Commission selects all the judicial nominees for the Supreme Court. The Commission is an unelected seventeen-member group that is comprised of 14 lawyers nominated by various associations of lawyers, such as the Association of Criminal Defense Lawyers, and 3 non-lawyer members. The members of the Commission are then appointed by leadership of the Tennessee Legislature. When there is an opening for a Justice on the Supreme Court, the Commission reviews all the applicants and sends the names of only three candidates to the Governor. The Governor must either choose one or ask for a second panel of three candidates. However, the Governor is then required to select one of the individuals from the second panel.

4. Were you aware that various associations of lawyers select 14 of the 17 members of the Judicial Selection Commission which selects all of the Tennessee Supreme Court nominees?

15% YES
83% NO
2% DON'T KNOW (VOLUNTEERED)
* REFUSED (VOLUNTEERED)

5. Do you approve or disapprove of this method of judicial selection for Tennessee's State Supreme Court? (PROBED: And do you STRONGLY or SOMEWHAT approve/disapprove?)

39% TOTAL APPROVE (NET)
10% STRONGLY APPROVE
29% SOMEWHAT APPROVE

47% TOTAL DISAPPROVE (NET)
21% SOMEWHAT DISAPPROVE
26% STRONGLY DISAPPROVE

5% NEED MORE INFORMATION/ NO BASIS TO JUDGE (VOLUNTEERED)
9% DON'T KNOW (VOLUNTEERED)
1% REFUSED (VOLUNTEERED)

6. The Tennessee State Constitution states that all judges must be “elected by qualified voters?” Were you aware of this requirement in the Tennessee Constitution?

33% YES
64% NO
2% DON'T KNOW (VOLUNTEERED)
1% REFUSED (VOLUNTEERED)

7. The Tennessee Plan – the method of judicial selection we have been speaking about – is set to expire in the summer of 2008. At that time, the Tennessee Legislature can either reauthorize the Tennessee Plan, meaning the process of selecting Justices would stay the same – or go back to elections, which Tennessee used to have – or institute a new method of selection, such as appointment by the governor. Which would you advise them to do: (READ AND ROTATED)

54% GO BACK TO ELECTIONS
19% INSTITUTE A NEW METHOD OF SELECTION
16% REAUTHORIZE THE TENNESSEE PLAN

3% NEED MORE INFORMATION/ NO BASIS TO JUDGE (VOLUNTEERED)
7% DON'T KNOW (VOLUNTEERED)
2% REFUSED (VOLUNTEERED)

8. There are several different ways by which State Supreme Court Justices could be selected. I am now going to describe for you a few different methods used by other states. Please tell me which one you think would be the best model for Tennessee. (READ AND ROTATE)

58% POPULAR VOTE – SUPREME COURT JUSTICES ARE ELECTED BY THE PEOPLE OF TENNESSEE IN ELECTIONS
17% FEDERAL MODEL – SUPREME COURT JUSTICES ARE NOMINATED BY THE GOVERNOR THEN CONFIRMED BY THE STATE SENATE
15% NOMINATING COMMISSION – JUSTICES ARE NOMINATED BY A COMMISSION, THE GOVERNOR APPOINTS AND VOTERS TAKE PART IN “YES OR NO” RETENTION ELECTIONS (THE CURRENT METHOD OF SELECTING SUPREME COURT JUSTICES IN TENNESSEE)

2% NONE OF THE ABOVE (VOLUNTEERED)
4% NEED MORE INFORMATION/ NO BASIS TO JUDGE (VOLUNTEERED)
5% DON'T KNOW (VOLUNTEERED)
1% REFUSED (VOLUNTEERED)

DEMOGRAPHICS

And now some questions for statistical purposes...

9. Which of the following categories best describes your age? (IF RESPONDENT SAID DON'T KNOW OR REFUSES TO ANSWER SAID, “I only need a range, not a specific age.”)

4% 18-24
16% 25-34
21% 35-44
20% 45-54
17% 55-64
20% 65+
3% REFUSED (VOLUNTEERED)

10. Would you describe your racial or ethnic background as...(READ LIST)?

84% WHITE/CAUCASIAN
13% BLACK/AFRICAN-AMERICAN
1% HISPANIC/LATINO
1% NATIVE AMERICAN
* ASIAN
* MIDDLE EASTERN
* OTHER (VOLUNTEERED)
- DON'T KNOW (VOLUNTEERED)
* REFUSED (VOLUNTEERED)

11. In politics today, do you consider yourself to be a (ROTATED) Republican, Independent, or Democrat? (If Republican or Democrat, asked: "Are you a strong (Republican/Democrat) or a not-so-strong (Republican/Democrat)?" (If Independent asked: "Which way do you lean towards, the Democratic or the Republican party?")

45% TOTAL REPUBLICAN (NET)
25% STRONG REPUBLICAN
11% NOT-SO-STRONG REPUBLICAN
9% INDEPENDENT LEANING REPUBLICAN

20% INDEPENDENT

30% TOTAL DEMOCRAT (NET)
4% INDEPENDENT LEANING DEMOCRAT
7% NOT-SO-STRONG DEMOCRAT
19% STRONG DEMOCRAT

1% OTHER (VOLUNTEERED)
4% DON'T KNOW/REFUSED (VOLUNTEERED)

12. Thinking for a moment about your political views...Do you consider yourself to be...?

49% TOTAL CONSERVATIVE (NET)
21% VERY CONSERVATIVE
28% SOMEWHAT CONSERVATIVE

28% MODERATE

15% TOTAL LIBERAL (NET)
10% SOMEWHAT LIBERAL
5% VERY LIBERAL

2% LIBERTARIAN

6% DON'T KNOW/REFUSED (VOLUNTEERED)

13. Gender

48% MALE
52% FEMALE

14. Region¹

37% EASTERN
37% MIDDLE
26% WESTERN

¹ Eastern: Anderson, Bledsoe, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sevier, Sullivan, Unicoi, Union and Washington.

Middle: Bedford, Cannon, Cheatham, Clay, Coffee, Davidson, DeKalb, Dickson, Fentress, Franklin, Giles, Grundy, Hickman, Houston, Humphreys, Jackson, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Montgomery, Moore, Overton, Perry, Pickett, Putnam, Robertson, Rutherford, Sequatchie, Smith, Stewart, Sumner, Trousdale, Van Buren, Warren, Wayne, White, Williamson and Wilson.

Western: Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, Lauderdale, Madison, McNairy, Obion, Shelby, Tipton and Weakley.