

TENNESSEE SUPREME COURT

Attorney General Bob Cooper

Bob Cooper : Enemy of Job Creators

- Led or joined numerous multistate lawsuits costing job creators billions in settlements
- Example settlements
 - ▣ Toyota - \$29 million
 - ▣ Wyeth - \$257.4 million
 - ▣ National Mortgage Settlement - \$1.5 billion
 - ▣ Google - \$7 million
 - ▣ Lender Processing Services - \$120 million
 - ▣ Abbott Laboratories - \$100 million
 - ▣ Janssen Pharmaceuticals - \$181 million

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Selection of the Attorney General

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- Tennessee Supreme Court Selects Attorney General
- Tennessee Constitution Article VI Section 5:
 - *An attorney general and reporter for the state, shall be appointed by the judges of the Supreme Court and shall hold his office for a term of eight years.*
- Eight Year Term – Expires August 31, 2014
- Simple Majority Selects Attorney General

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Tennessee Supreme Court

Supreme Court Justices

- Chief Justice Gary Wade (Bredesen)
- Justice Connie Clark (Bredesen)
- Justice Janice Holder (Sundquist – Retiring)
 - ▣ Replaced by Holly Kirby as of Sept 1, 2014
- Justice William Koch (Bredesen - Retiring)
- Justice Sharon Lee (Bredesen)

Tennessee's Missouri Plan

Supreme Court Retention Process

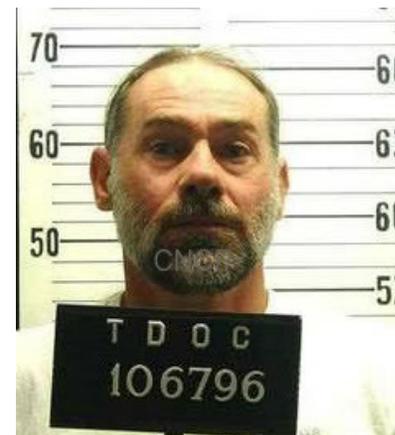
- ❑ Tennessee fills Supreme Court Vacancies through Gubernatorial Appointment
- ❑ Serve Eight Year Term
- ❑ Justices up for a retention vote in August 2014
 - ❑ Shall _____ be retained or replaced in office as a Judge of the _____ (court) _____?
____ RETAIN
____ REPLACE
 - ❑ Ballot language codified in TCA §17-4-115(b)(1)
 - ❑ Retain/Replace Only – Not a contested election unless given a negative recommendation from the Judicial Performance Evaluation Commission

Tennessee Supreme Court: Soft on Crime

Sharon Lee

- Leonard Edward Smith killed two people in 1984
- Sharon Lee authored the opinion that vacated this double murderer's death sentence because of questions "whether Smith was intellectually disabled" and received a competent defense

Meet Leonard Edward Smith



Sharon Lee authored the opinion that let this double murderer off death row.

Leonard Edward Smith v. State of Tennessee

Connie Clark

- ❑ Voted to let Arthur Copeland, convicted murderer, out of death row and back in to society
- ❑ In and out of jail repeatedly since he was freed, Copeland was arrested for allegedly raping his girlfriend and “stuck the barrel of a pistol in the woman’s mouth”



Tennessee Death Penalty (or lack thereof)

- Tennessee has only executed 6 inmates since 1976 – and none since 2009
- The Supreme Court sets execution dates for offenders after required direct appeals are complete upon petition of the Attorney General
- There are currently 76 inmates on death row awaiting execution
- Supreme Court has set 11 execution dates for 2014
- The first has already been vacated
 - Nickolus Johnson – on death row for nearly 7 years for killing a police officer in 2004

Victims' Photographs Used In Cases

- The state Supreme Court has taken a dim view of allowing victims' photographs to be introduced as evidence because it could jeopardize the integrity of the trials
- “Over the years, the Court has consistently cautioned the State against the introduction of such photographs because they typically lack relevance to the issues on trial and because of their potential to unnecessarily arouse the sympathy of the jury,” Chief Justice Gary R. Wade wrote in a 2013 opinion.

Tennessee Supreme Court: Business Decisions

Becker v. Ford Motor Company

- ❑ Michael Becker and son Phillip Becker were injured in an accident in a Ford F-150
- ❑ Michael Becker was the owner of the truck; Phillip Becker was driving
- ❑ Michael Becker sued Ford and later, after expiration of the statute of limitations, filed an amended complaint to add his son to the complaint as a defendant
- ❑ Ford objected, saying the statute of limitations had run
- ❑ Supreme Court ruled that the plaintiff can add a defendant after a lawsuit was filed and after the statute of limitations had run even if the defendant was known to the plaintiff when the complaint was originally filed

Cracker Barrel v. Richard Epperson

- ❑ Opinion Authored by Connie Clark
- ❑ Lawsuit originated over Epperson's desire to expand property adjacent to a Cracker Barrel violating restrictive covenants relative to vehicular easements.
- ❑ Cracker Barrel won the suit, but the Supreme Court ruled that the contractual language "all costs and expenses of any suit or proceeding" was not enough for Plaintiff to collect attorney fees.
- ❑ Direct assault on "loser pays" contractual language.

Gary Gosset v. Tractor Supply Company

- A former employee alleged retaliatory discharge after he was dismissed from the company due to duplication of work product and other performance issues, including insubordination.
- The Supreme Court eroded Tennessee's right to work case law by setting aside legal precedent that required that "reporting the alleged illegal activity is an essential element of a cause of action for retaliatory discharge"

Dewald v. HCA of Tennessee

- HCA was sued by a patient due to alleged malpractice by a non-employee physician.
- Plaintiff argued that hospitals may be held vicariously liable for the negligence of independent contractor physicians.
- Supreme Court refused to affirm HCA's summary judgment motion, and set out the possibility to hold the hospital accountable for the actions of others outside of their direct control.

Lind v. Beaman Dodge Chrysler Jeep

- Supreme Court allowed an individual to sue the dealer who sold them a truck that allegedly “self-shifted” into reverse and injured the driver.
- The statute of limitations had expired, but the Court allowed the suit to continue because the manufacturer had become insolvent and thus began the Plaintiff’s ability to pursue a strict liability claim.

Hill v. NHC Nashville

- The Supreme Court found that, despite being clearly stated and agreed to in the admissions agreement, a contract provision requiring disputes be resolved in arbitration to be unconscionable.
- One of the administrators of the estate that was suing signed the agreement directly beneath the arbitration clause.

Myers v. NHC McMinnville

- Jury trial resulted in a \$29.8 million punitive damage judgment against NHC, which the trial judge reduced to \$163,000.
- Court of Appeals reversed the trial judge's decision to reduce the punitive damages and remanded the case back to the trial court for further proceedings, despite the trial judge stating he found no overt recklessness on the part of NHC.
- Supreme Court declined to hear the case.

Sarah White v. Target Corp.

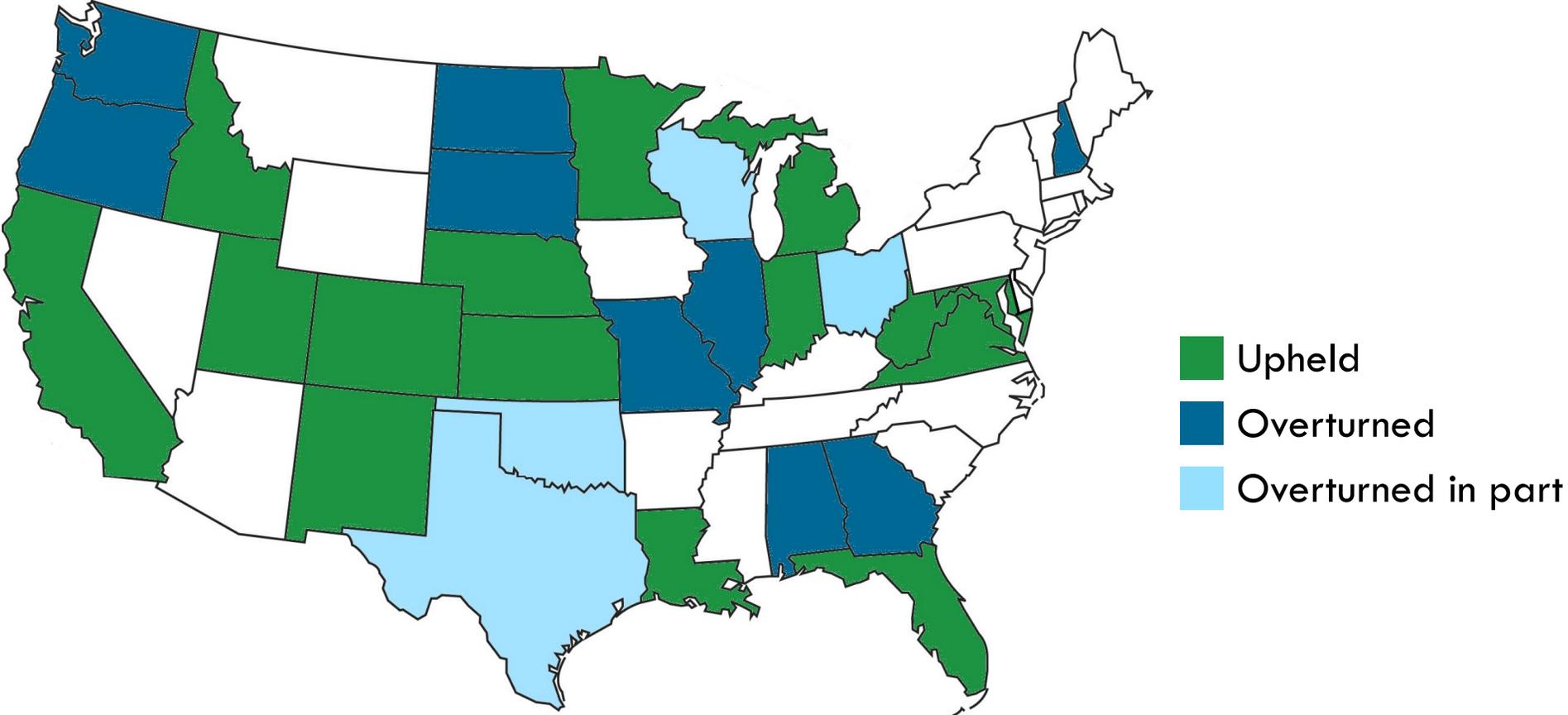
- ❑ Female customer sued target after being told a smoked glass dome above the dressing room that she tried on clothes contained a security camera when it in fact did not.
- ❑ Plaintiff sought \$22 million in damages from Target for emotion distress, despite there not actually being a camera.
- ❑ Trial court granted Target's summary judgment motion, but the Tennessee Court of Appeals reversed that decision and allowed the suit to proceed.

Tort Reform finished? Not so fast.

Coming to Tennessee Supreme Court

- Sadowski v. Kheiv; Shelby County Circuit Court
- Jury awarded plaintiffs \$2.7 million in non-economic damages from car accident
- Media Coverage: “Case Pits Survivor Against His Own Insurer Over Uninsured Motorist Claim; **Weakened State Law Limits Recovery for Wife’s Painful, Lingering Death**”
- Plaintiff’s Attorney: “In other states, high courts have **struck down as unconstitutional** attempts to take such decisions away from juries. This case could provide an opportunity to **present the issue to the Tennessee Supreme Court.**”

Tort Reform Tossed? It's Happened Before



Tort Reform Tossed? It's Happened Before

- ❑ Alabama: Cap represents impermissible burden on the right to trial
- ❑ Georgia: Cap violates a plaintiff's right to trial by jury
- ❑ Illinois: Cap violates separation of powers
- ❑ New Hampshire: Cap violates state equal protection clause
- ❑ Oklahoma: Cap overturned as a "special law"
- ❑ Ohio: Cap overturned as due process violation
- ❑ South Dakota: Cap violated the open courts doctrine by limiting liability
- ❑ Texas: Cap ruled "unreasonable and arbitrary"

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Involvement in Performance Evaluations

Judicial Performance Evaluation Commission

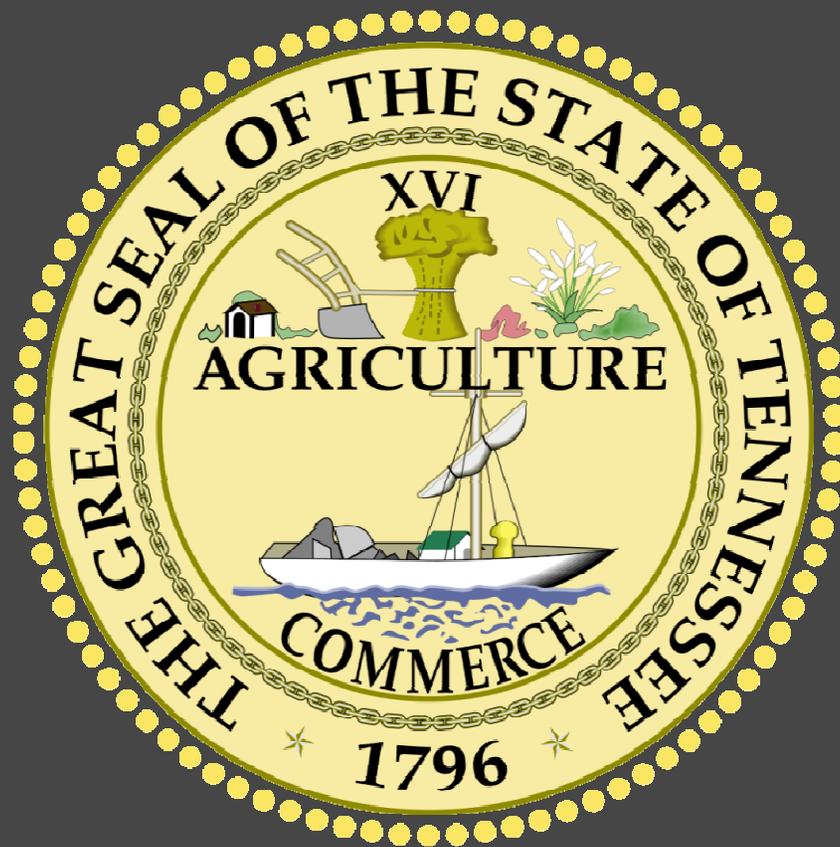
- Prior to standing for a retention election, judges are evaluated by the Judicial Performance Evaluation Commission (“JPEC”)
- Members of JPEC are appointed by both Speakers
- JPEC recommends either retention or not to retain, at which point judges must run in a contested election – which has never happened

Judge Wade Interfering in JPEC's Duties

- After three judges received preliminary negative recommendations, “Chief Justice Gary Wade of Sevierville said in an interview that he believes all three judges receiving negative recommendations from the Judicial Performance Evaluation Commission deserve new terms.”
- After Wade’s defense of the judges, the article continued to say that “The negative recommendations have raised questions of partisanship and diversity.”
- Wade later had to clarify his statements and say he was “merely voicing [his] personal opinion based on personal knowledge of the judges involved.”

Partly Cloudy-Sunshine Forecast for the Judiciary

- ❑ On February 18th, a JPEC meeting was called to discuss the final report on the judges who received preliminary negative retention recommendations.
- ❑ A staff member of the Lt. Governor attempted to attend the meeting and was asked to leave, despite the Commission continuing to conduct business.
- ❑ Sunshine laws should apply to judicial commissions so they do not decide who Tennessee's judges are in private.



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