

Statement on House Resolution 23

The Memphis Bar Association, Tennessee Bar Association, Nashville Bar Association, and others join together to defend the independence of the judiciary in Tennessee.

MEMPHIS, MARCH 5, 2021 -- The Memphis Bar Association issued a statement today “strongly condemning” a Tennessee House resolution that would consider removing Nashville Chancellor Ellen Hobbs Lyle from office. House Resolution 23 (HR 23) “is as undemocratic as it is dangerous and flatly forbidden by the separation of powers principles enshrined in the Tennessee Constitution.”

Below is the complete statement from MBA President Peter Gee and the MBA Executive Committee:

The Memphis Bar Association (MBA) joins in and fully supports the statements against Tennessee House Resolution (HR) 23 issued by the Tennessee and Nashville Bar Associations. Like those associations, the MBA represents a wide spectrum of lawyers and judges. And like those associations, the MBA feels that HR 23 undermines Tennessee’s mandate for an independent and impartial judiciary and jeopardizes the separation of powers principles codified in and core to the Tennessee Constitution.¹

HR 23 seeks to initiate removal proceedings against Chancellor Ellen Hobbs Lyle of Nashville for rulings with which certain state legislators disagreed. It appears to be the first time that legislators have sought to use Article VI, Section 6 of the Tennessee Constitution, which establishes a process for removing judges and attorneys for the state for cause, to remove a judge based on her rulings in a judicial proceeding.

The Tennessee Supreme Court long ago made clear that removing a judge under Article VI because she ruled unconstitutional a state legislative provision would be “wholly abhorrent to fundamental ideas of justice and judicial independence.”² Instead, the court has explained, removal under Article VI must result from “official misconduct.”³ Article VI removal never has occurred over disagreement with a single judicial decision and never should.

Indeed, the appellate process is the normal and adequate remedy for a judicial ruling with which a party disagrees. The State invoked that very process in the case described in HR 23, obtaining a vacatur of Chancellor Lyle’s temporary injunction from the Tennessee Supreme Court—after reversing its position and agreeing to part of the relief that Chancellor Lyle had ordered. The Tennessee Supreme Court ordered the State to adhere to that concession upon remand, with the practical result being that the bulk of the relief ordered by Chancellor Lyle remained in place. In fact, Chancellor Lyle issued several subsequent compliance orders upon remand, none of which the State appealed. And even the partial reversal of Chancellor Lyle’s ruling was not unanimous. Rulings as to which the most learned and capable legal minds in Tennessee may disagree—as the justices of our highest court did here—necessarily cannot constitute “official misconduct” under Article VI.

In the rare cases where the appellate process is an insufficient remedy for an adverse judicial ruling, Tennessee law provides another way to hold judges accountable: the Board of Judicial Conduct, which the state legislature created and the members of which are appointed by the leaders of each chamber of the legislature. That body, in turn, provides an orderly and efficient method for inquiring into, among other

¹ See Article II, Section 2.

² *McCulley v. State*, 53 S.W. 134, 138 (Tenn. 1899).

³ *In Re Dender*, 571 S.W.2d 491, 492 (Tenn. 1978).

things, a judge's fitness for office and manner of performance. Any state legislator concerned about Chancellor Lyle's fitness for office is free to file a complaint with the Board.

Finally, removal under Article VI for an allegedly improper judicial ruling is particularly inappropriate where, as here, a judge is elected by Tennessee citizens. If Chancellor Lyle's decision is as problematic as HR 23's sponsors say it is, then they can convince their constituents to remove her at the next election. For state legislators to substitute their judgment for the people's is as undemocratic as it is dangerous and flatly forbidden by the separation of powers principles enshrined in the Tennessee Constitution.

Judges must be free to decide matters based on their best assessment of the facts and the law without fear of retribution or interference by the other branches of government. Multiple processes currently exist as a check on all judges, and those processes work. The MBA strongly condemns HR 23 as an unprecedented invasion of the judicial function and urges the members of the Tennessee General Assembly and the citizens of this state to utilize the appeals process, make complaints to the Board of Judicial Conduct when necessary, and exercise their right to vote. Our state cannot abide an unconstitutional, anti-democratic substitute for these measures. HR 23 should be rejected.

###