

**URGENT NOTICE TO THE TENNESSEE FELLOWS OF THE AMERICAN COLLEGE OF TRIAL LAWYERS FROM
STATE COMMITTEE CHAIR, DAVID WADE, REGARDING JUDICIAL INDEPENDENCE IN THE STATE**

March 8, 2021

Many of you know that the State House of Representatives has before it for consideration on March 9, 2021, at 9 a.m., House Resolution 23, the purpose of which is to begin proceedings to remove Chancellor Ellen Lyle from her duly elected position as Chancellor for the Twentieth Judicial District.

The sole basis for the removal effort arises from an opinion issued by Chancellor Lyle in two cases seeking injunctive relief to require the State to permit persons in fear of infection from the Covid-19 virus at public polling sites to instead vote by absentee ballot. Chancellor Lyle granted injunctive relief and an immediate right of appeal. A direct appeal to the Tennessee Supreme Court resulted in findings that part of Chancellor Lyle's ruling was mooted because the State stipulated it was correct and part was reversed. The Supreme Court further ruled that all absentee ballots otherwise properly issued to voters who relied on the trial court's injunction ruling were to be duly counted by the State.

Accessible on the College's web-page are two White Papers: "The Need to Promote and Defend Fair and Impartial Courts" (2019) and "Judicial Independence: A Cornerstone of Democracy Which Must Be Defended" (2006).

The 2019 White Paper, under the heading *State Legislatures Threaten to Curtail Judicial Authority*, directly addresses a situation such as the one presently before the House.

In recent years, we have seen repeated attempts by state legislators in numerous states to remove judges solely because of their disagreement with a particular opinion....

The message that such attempted measures send conflicts with the fundamental principle of separation of powers. Likewise, such measures confuse the public as to the singular, apolitical role of the judiciary in our Constitutional democracy. Efforts to push the judiciary to factor politics and popular opinion into their decision-making are real threats with real consequences.

HR 23 charges that Chancellor Lyle's opinion granting injunctive relief was issued in violation of State law and her oath of office, meriting her removal from the bench. On the other hand, Justice Sharon G. Lee stated in her concurring and dissenting opinion that would affirm Chancellor Lyle's ruling in its entirety: "The foremost policy of the State of Tennessee is the fundamental law of our Constitution. And it is our solemn judicial duty to protect fundamental rights by carefully examining the state's reasons when these rights are burdened." The right to vote is one of those fundamental rights.

The purpose of this Notice is to inform the Tennessee Fellows of the American College of Trial Lawyers of the pendency of HR 23 and to encourage each of you urgently to notify your legislators as soon as possible regarding your position on the issue.

David Wade, Chair of the Tennessee State Committee of the American College of Trial Lawyers.