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Senator Luke A. Rankin
Chairman, Senate Judiciary Committee
101 Gressette Building
Columbia, South Carolina 29201

In re: Judicial Reform

Dear Chairman Rankin,

Since last spring I have been discussing with you the need to reform the Judicial Merit Selection Commission.

As I have indicated to you, I believe the current process lacks transparency and gives the public the impression that a small group of powerful lawyer legislators control who gets elected to these positions.

Since many of these positions pay close to or over \$200,000 a year, they are highly sought after, even more so since the pay was increased a few years ago.

Attached is a draft piece of legislation that I believe addresses most of the major concerns I have encountered.

First, it would eliminate the narrowing of the nominees to three and only allow the Commission to find candidates qualified or unqualified based on specific findings. If 10 individuals run for a specific judgeship and all are found qualified, then 10 will come out of screening to run and receive a vote by the General Assembly.

Second, all comments and complaints would be made public rather than the anonymous process used now. Currently, candidates are forced to defend criticisms by unknown persons based on unknown circumstances. Certainly, we should not use a Star Chamber process to pick our judges.

Third, once a candidate submits their application they will not be allowed to withdraw. This avoids the appearance in the past that some candidates were allowed to withdraw rather than having a negative report. Candidates should make sure they want to go through this process before they file.

Fourth, no one related by the second degree of affinity or consanguinity to a sitting legislator would be allowed to file.

Fifth, the South Carolina Bar would receive one appointment to the Commission of a lawyer with at least 10 years' experience in either trial or appellate law.

I have asked you to take one of the judicial reform bills currently pending in our committee and appoint a subcommittee to begin taking testimony and crafting a bill to come to the floor as soon as possible in the session. Without the immediate appointment of a subcommittee, I believe we will not be able to get judicial reform accomplished this year.

Whether we adopt my proposal, or some other proposal, isn't as important as beginning the process.

Please let me know what I can do to help.

Sincerely,



Richard A. Harpoortian
Senate District 20

RAH:hm
Enclosure

A BILL

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 2-19-10, RELATING TO APPOINTMENT OF THE JUDICIAL MERIT SELECTION COMMISSION, SO AS TO PROVIDE THAT TWO MEMBERS MUST BE APPOINTED UPON THE RECOMMENDATION OF THE SOUTH CAROLINA BAR ASSOCIATION; BY AMENDING SECTION 2-19-30, RELATING TO JUDICIAL MERIT SELECTION COMMISSION HEARINGS, SO AS TO PROVIDE THAT A CANDIDATE MAY NOT WITHDRAW HIS CANDIDACY AFTER THE JUDICIAL MERIT SELECTION COMMISSION BEGINS ITS INVESTIGATION INTO HIS QUALIFICATIONS; BY AMENDING SECTION 2-19-35, RELATING TO CRITERIA FOR INVESTIGATIONS AND CONSIDERATION BY THE JUDICIAL MERIT SELECTION COMMISSION SO AS TO PROVIDE THAT THE COMMISSION SHALL NOT CONSIDER ANY INFORMATION FROM ANONYMOUS SOURCES; BY AMENDING SECTION 2-19-70, RELATING TO THE PROHIBITION AGAINST CERTAIN PEOPLE BEING ELECTED TO A JUDGESHIP, SO AS TO PROHIBIT ANY PERSON RELATED TO A MEMBER OF THE GENERAL ASSEMBLY BY CONSANGUINITY OR AFFINITY WITHIN THE SECOND DEGREE FROM BEING ELECTED JUDGE; BY AMENDING SECTION 2-19-80, RELATING TO NOMINATION OF QUALIFIED CANDIDATES TO THE GENERAL ASSEMBLY, SO AS TO PROVIDE THAT ALL QUALIFIED CANDIDATES ARE SUBMITTED TO THE GENERAL ASSEMBLY; AND BY AMENDING SECTION 2-19-80, RELATING TO NOMINATION OF QUALIFIED CANDIDATES TO THE GENERAL ASSEMBLY, SO AS TO CLARIFY WHEN AN INCUMBENT JUDGE MAY WITHDRAW HIS NAME FROM CONSIDERATION BY THE JUDICIAL MERIT SELECTION COMMISSION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 2-19-10(B) of the S.C. Code is amended to read:

(B) Notwithstanding any other provision of law, the Judicial Merit Selection Commission shall consist of the following individuals:

(1) five four members appointed by the Speaker of the House of Representatives and of these appointments:

(a) ~~three~~two members must be serving members of the General Assembly; ~~and~~

(b) two members must be selected from the general public; and

(c) one member upon the recommendation of the South Carolina Bar Association who must be a licensed member of the bar with at least ten years trial or appellate experience.

(2) ~~three~~two members, appointed by the Chairman of the Senate Judiciary Committee, who must be serving members of the Senate; ~~and~~

(3) two members, appointed by the President of the Senate, who must be selected from the general public; and

(4) one member appointed by the Chairman of the Senate Judiciary Committee upon the recommendation of the South Carolina Bar Association who must be a licensed member of the bar with at least ten years trial or appellate experience.

SECTION 2. Section 2-19-30(E) of the S.C. Code is amended to read:

(E) A candidate may not withdraw his candidacy at any stage of the proceedings and in this event no further inquiry or consideration of his candidacy shall be made. All materials concerning that candidate including his report, transcript, application, materials, and other information gathered during the commission's investigation must be kept confidential and destroyed as soon as possible after the candidate's written notification to the commission of his withdrawal. The information concerning a withdrawn candidate also shall be exempt from disclosure pursuant to Chapter 4 of Title 30. after the Judicial Merit Screening Commission initiates its investigation pursuant to Section 2-19-25. The Judicial Merit Screening Commission is presumed to have initiated its investigation upon the commission's receipt of a candidates application containing information related to the candidate's qualifications for office.

SECTION 3. Section 2-19-35 of the S.C. Code is amended by adding:

(C) The commission shall not consider any anonymous surveys, ratings, complaints, or other statements regarding a candidate during its investigation of a candidate.

SECTION 4. Section 2-19-70(A) of the S.C. Code is amended to read:

(A) No member of the General Assembly or any person related to a member of the General Assembly by consanguinity or affinity within the second degree may be elected to a judicial office while he-the member is serving in the General Assembly nor shall that person be elected to a judicial office for a period of one year after he-the member either:

(1) ceases to be a member of the General Assembly; or

(2) fails to file for election to the General Assembly in accordance with Section 7-11-15.

SECTION 5. Section 2-19-80(A) of the S.C. Code is amended to read:

(A) The commission shall make nominations to the General Assembly of candidates and their

1 qualifications for election to the Supreme Court, court of appeals, circuit court, family court, and the
2 administrative law judge division. It shall review the qualifications of all applicants for a judicial office
3 and ~~select therefrom and~~ submit to the General Assembly the names and qualifications of all of the
4 ~~three~~ candidates whom it considers ~~best~~ qualified for the judicial office under consideration.~~If fewer~~
5 ~~than three persons apply to fill a vacancy or if the commission concludes there are fewer than three~~
6 ~~candidates qualified for a vacancy, it shall submit to the General Assembly only the names and~~
7 ~~qualifications of those who are considered to be qualified, with a written explanation for submitting~~
8 ~~fewer than three names.~~

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10 SECTION 6. Section 2-19-80(C) of the S.C. Code is amended to read:

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12 (C)(1) If the commission does not find the incumbent justice or judge qualified for the judicial office
13 held and sought, his name shall not be submitted to the General Assembly for re-election and upon
14 expiration of his then current term of office, he shall cease serving in that judicial position.

15 (2) If the commission finds an incumbent judge not qualified for the office sought, or if an
16 incumbent judge withdraws as provided in Section 2-19-30(E), or dies, ~~withdraws~~, or becomes
17 otherwise disqualified for the office sought between the time he makes application for the office and
18 the date of the election therefor, the election for the office may not be held at that scheduled time, and
19 the commission shall proceed in accordance with the provisions of this chapter to make other
20 nominations for the office as though a new vacancy without an incumbent exists in that office, including
21 reopening the application process with all required notices. Nothing prevents the commission from
22 including in its new nominations the names and qualifications of persons other than the incumbent
23 judge it included in its previous nominations.

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25 SECTION 7. This act takes effect upon approval by the Governor.

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