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G. MURRELL SMITH, JR.
SPEAKER OF THE HOUSE

MEMORANDUM

To: Representative Thomas E. "Tommy" Pope, Representative Weston J. Newton, Representative William H. Bailey, Representative Justin T. Bamberg, Representative Micajah P. "Micah" Caskey, Representative Gilda Cobb-Hunter, Representative Brandon Guffey, Representative Russell L. Ott, Representative Robby Robbins, Representative Anne J. Thayer, Representative Ivory Torrey Thigpen, Representative Elizabeth "Spencer" Wetmore, Representative Chris Wooten

From: G. Murrell Smith, Jr., Speaker of the House *amsjr*

Date: October 3, 2023

Re: Ad-Hoc Committee Appointment

I am pleased to appoint you to an Ad Hoc Committee to examine the Judicial Selection and Retention process in South Carolina. One of the most important functions of the South Carolina General Assembly is the selection of judges in this state. It is a process we must ensure is carried out in the best way possible so that the public can have confidence that its judges are fair, and that the selection process reflects the best judgement of the people.

This group, under the leadership of Speaker Pro Tempore Tommy Pope and Judiciary Chairman Weston Newton, will consist of a diverse group of lawyer and non-lawyer legislators to assure that wide array of viewpoints are presented. It is my expectation that this group will have multiple public hearings in order to listen to all viewpoints, take those viewpoints into account and then deliver a set of recommendations to the membership of the House of Representatives no later than February 1, 2024, so that they may be swiftly considered.

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The South Carolina Judiciary is a strong institution. The entire nation watched as The Honorable Clifton Newman demonstrated the best of the judicial branch. The state's Court of Appeals, under the leadership of The Honorable Bruce Williams, has sped up decisions to bring final judgement for the citizens of South Carolina. The Honorable John Kittredge prepares to take over a Supreme Court that is strong and respects the rule of law and separation of powers in even the most difficult circumstances.

None of this is to say that there is not room for improvement. The inquiry I am asking you to take on is less about individual judges and more about the system for selecting them and holding them accountable. As has been stated by advocates for reform many times, a good system can and will produce the occasional "bad judge". While I believe we have done much to minimize those outcomes, there is always more that can be done.

There are three primary areas I would ask this group to thoroughly examine:

First, the South Carolina Constitution prescribes that the Judicial Merit Selection Commission (JMSC) screen applicants for judicial offices and that the South Carolina General Assembly hold elections based on nominations from the JMSC. I ask this question: How can the General Assembly improve this constitutionally prescribed process? South Carolina has, since its inception, rejected the notion of centralized authority, believing that the direct representatives of the people are entrusted with the greatest authority.

In contrast, the other models for selecting judges, the so-called federal model and popular elections, each present significant weaknesses that are not inherent in our system. An executive appointment system, even with advice and consent, can lead some judges to be unaccountable and overly beholden to the philosophy of their singular appointer. While popular elections often put judges, who should be apolitical, in the position of considering how their rulings will impact their elective fortunes, South Carolina avoids these obvious pitfalls. Our state instead has 170 direct representatives of the people review and consider judges in regular intervals.

While I believe it is fair to discuss the pros and cons of alternative selection processes, I do not believe that, in the immediate future, the will exists to change the South Carolina Constitution.

Second, what can the General Assembly, the Judicial system and the state at large do to enhance the practice of being a judge and to enhance the public's confidence in judges? How do we ensure that judges have the resources and ability to effectively do their job quickly, efficiently and fairly while also making sure they remain accountable to the public for the performance of their duties? It is paramount for citizens, businesses, crime victims and everyone else that our judges be up to the task before them and able to perform without unnecessary delay and that the public trust the decisions made by those judges.

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Third, and finally, I would ask that as this group examines the judicial system, we pay special attention to the magistrate system in South Carolina. The vast majority of the public that interacts with the judicial system does so before the states many, many magistrates. Magistrates are an essential portion of the criminal and civil justice system. They are most often the first person to reach a criminal matter and handle many individual civil claims in this state. I will point out, there is no role for the House in the qualification or selection of magistrates at this time. That authority is reserved to the Senate and the Governor. I want to be clear; I am not seeking a change to that system. The House does not and should not be involved in the appointment of magistrate judges. However, there are likely several suggestions related to qualifications and jurisdiction that would be appropriate in statute to enhance the performance of the magistrate system and I would ask that you look very carefully at those.

The task I ask of each of you is substantial, but extremely important to our state. I have full confidence that this committee will take the necessary time and effort and fully engage all stakeholders to ensure its recommendations will be truly beneficial to our system and the people it serves. I thank each of you for your service and look forward to watching the Committee and the work it does.