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## Forum addresses state of judicial diversity in S.C.

By Traci Bridges

The public is invited to participate in a panel discussion in Florence on the state of diversity in the South Carolina Judiciary.

The panel discussion will be Monday in Francis Marion University's Chapman Auditorium. Panel guests include FMU political science professor Dr. Alissa T. Warters; Charleston School of Law Professor Constance Anastopoulo; U.S. District Court Judge Terry Wooten; and state Rep. Terry Alexander, D-Florence.

The event is part of a national effort by the League of Women Voters "to promote the importance of fair and impartial courts nationwide." Since 2009, the league's focus has been the promotion of diversity at all levels of the state judiciary to enhance the legitimacy of our system of justice in the eyes of the public, event organizer and Florence Area League of Women Voters President Sara Stewart said.

South Carolina's process of judicial selection is considered a "Merit Selection" system, when compared with other states' selection processes. One concern about the process in South Carolina is the perceived lack of a check and balance on the legislature's power in the implementation of the selection process. South Carolina and Virginia are the only states that utilize a system of judicial selection that relies exclusively on the legislature to serve as both the qualifying commission and the selecting entity.

"Judges do not reflect the diversity of the population of our state," Stewart said. "The concern is a lack of diversity tends to diminish confidence in the judicial system, because litigants who see judges who do not reflect their backgrounds assume those judges don't understand the circumstances of their particular lives. If the public loses confidence in the fairness and impartiality of the courts the entire system of justice and democracy is at stake."

South Carolina's Judicial Merit Selection Commission (JMSC) was created in 1997 in light of concerns about the influence of legislators over judicial selection and questions about the level of judicial independence. The voters of South Carolina approved an amendment to the state constitution that created this separate body to exercise a portion of the power of selecting judges and justices. The purpose of the Commission is to consider the qualifications and fitness of candidates for South Carolina's courts.

Ten members make up the JMSC. Five members are chosen by the speaker of the House of Representatives, of which three must be serving members of the General Assembly and two must be selected from the general public. The Senate selects the remaining five members: three are appointed by the chairman of the Senate Judiciary Committee, and two are appointed by the president pro tempore of the Senate. Similarly, of these five, three must be serving members of the General Assembly, and two must be selected from the general public.

“All of us have untested assumptions and biases based on our personal experiences, and there’s not much diversity in background with this system,” Stewart said. “Different backgrounds tend to result in a better-thought out result. It may end up being the same result, but it will be better thought-out.”

Only eight of the state’s 118 judgeships are occupied by a minority.

“A study of merit selection systems found that a more diverse nominating commission is more likely to recommend persons of color and women,” Stewart said. “While six states explicitly require diversity among nominating commissioners, South Carolina does not.”

The league’s second concern about South Carolina’s judicial selection process is rooted in judicial independence. In March, Anastopoulo wrote a brief on behalf of the league in a case involving sitting Family Court Judge Frances P. Segars-Andrews, who is up for re-appointment to her seat, which she’s held for the past 16 years. Segars-Andrews filed a complaint addressing her individual claims regarding the use of specific evidence contemplated by the JMSC in consideration of her qualification that resulted in a “not qualified vote” by the commission, and second the constitutionality of the membership of the commission.

The brief Anastopoulo filed on behalf of the league “was not intended to and did not address the individual qualifications of Judge Segars-Andrews; rather it addressed the issues of the constitutionality of the process of judicial selection in South Carolina and the importance of judicial independence,” Anastopoulo wrote in a column in the league’s newsletter.

Specifically, the league argued that by enacting the statute mandating the membership of the JMSC be dominated by a majority of current legislators, the General Assembly violated both the “dual office holding” ban of the Constitution and frustrated the intent of the vot

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