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EDITORIAL: Politics threaten judicial system

By Sara Stewart

In 1997, the citizens of South Carolina, upset by the overwhelming control exercised by the General Assembly over the selection of judges, amended the State Constitution to create the Judicial Merit Selection Committee. The role of the JMSC is to screen potential judicial candidates and present three names for a vote by the legislature.

The JMSC's 10 members are appointed by the Speaker of the House and the Senate President *Pro Tem*, who also sits as the JMSC's Chair. These two men, by selecting the committee's commissioners, control the appointment of judges across the state.

Only South Carolina and Virginia allow the legislature both to screen judges and elect them. Our legislature also sets the court system's budget. As a result, judges are completely dependent on legislators for both their jobs and the resources to run the courts.

On March 23rd, our Supreme Court determined that the JMSC's decision to block re-election of a veteran Family Court Judge, the Hon. Frances P. Segars-Andrews, for failing to recuse herself in a single divorce case. The JMSC said that Segars-Andrews, a judge of 16 years, was "ethically unfit," based on a complaint from one disgruntled party. The committee refused to submit her name for re-appointment, although both the South Carolina Court of Appeals and the Commission on Judicial Conduct had found that she had acted correctly in the matter at question. For legal reasons, the decision was not reviewable. The Supreme Court agreed that she had acted properly and ethically. However, it held that under our state Constitution, the JMSC alone determines a judge's qualifications and has the power to make "subjective" and "political" decisions about judicial fitness, which will not be upset unless the decision clearly violates the South Carolina or United States Constitution.

As a result of the JMSC's action and the subsequent high court rulings, every state judge's independence is threatened and all judges find themselves at the mercy of powerful disgruntled litigants and legislators.

Legislative control of the JMSC has other consequences. At least in part because of JMSC actions, our judiciary does not reflect the diversity of the people of South Carolina.

Twenty-two percent of our state's judges are women, and seven percent are minorities, although South Carolina's general population is 52 percent female and 30 percent African-American. Put another way, although white men are approximately 33 percent of the population, they occupy nearly 80 percent of judicial seats. When you exclude Family Courts – which for whatever reason is the posting of a large number of female judges -- the comparison is even more stark. Eighty-nine percent of the remaining judges are white men.

Does diversity in our courts matter? It seems likely. A 2008 study by the Brennan Center for Justice points out that “diversity of viewpoints will produce a more robust jurisprudence ¼ and ¼ enhance the legitimacy of our system of justice in the eyes of an increasingly diverse public.” Supreme Court Justice Powell noted that “a member of a previously excluded group can bring insights to this group that the rest of its members lack.”

A recent example of the power of a different perspective is when US Supreme Court Justice Ruth Ginsberg spoke out powerfully against the strip search of a teenaged girl for drugs in high school. The male justices had regarded this as an ordinary occurrence, like locker room nudity. Justice Ginsberg spoke out strongly against the humiliation suffered by the girl who was forced to remove her clothing in front of school officials after offering a classmate an over-the-counter remedy for menstrual cramps. Justice Ginsberg's viewpoint opened her colleagues' eyes and changed the result. Diversity does not always mean different results, but as this example shows, the result will be a better-considered one, with underlying assumptions tested, and underlying biases exposed.

The League of Women Voters is committed to exploring the subject of judicial selection and has committed significant resources to programs nationwide to engage citizens in education and debate. The League of Women Voters of the Florence Area, in conjunction with the Robert E. McNair Center for Government and History, will present a public forum on Monday, November 29th at 6 pm in FMU's Chapman Auditorium, with a reception to follow at 7:30 pm. The panelists will be Constance Anastopoulo, Professor of Law at the Charleston School of Law; Hon. Terry Wooten, Judge of the Federal District of South Carolina, and the Hon. Terry Alexander, Rep. Distr. 59, Florence and Marion Counties. The discussion will be moderated by T. Alissa Warters, Ph.D., Associate Professor of Political Science and Geography at FMU, and Co-Director of The McNair Center.

It will be an informative evening on an important topic. The League hopes everyone will make plans to attend.

Sara Steward is a Florence-area attorney and chairman of The League of Women Voters of the Florence area.

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