

October 23, 2023
Via Email and U.S. Mail

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In re: Lawyer-Legislators appointed to the Judicial Merit Selection Commission

Dear Speaker Smith and Chairman Rankin:

We support reforming the process by which we select judges in South Carolina. Judicial reform is a significant topic of public interest and one of the major reform proposals offered by legislative members thus far includes changing the composition of the Judicial Merit Selection Commission (JMSC). As you know, elected Solicitors and Sheriffs support legislation removing legislative involvement in the JMSC. We believe legislation removing legislators from the JMSC would go a long way toward improving the judicial selection process and restoring public confidence in our judiciary. *See* “Editorial: SC deserves a higher standard for judges than ‘never been indicted’” THE POST AND COURIER (Oct. 14, 2023).

Regardless of what reform package the General Assembly may pursue, it is our opinion that **ALL** lawyer-legislators be removed from the JMSC immediately. The public is weary of JMSC members having their family and friends elected to the bench. We are writing to ask that you exercise your appointment power as Speaker of the House and Chairman of the Senate Judiciary to immediately replace the six lawyer-legislators with non-lawyer members of the General Assembly.

One JMSC member has been central to a number of recent scandals that have eroded public confidence in our State’s judiciary and have created an appearance of undue influence derived from the considerable power granted by his role in the JMSC. We wish to highlight Rep. J Todd Rutherford’s actions because they illustrate the conflicts inherent in the current JMSC process.

In *State v. Jeroid J. Price*, Appellate Case No. 2023-000629 (filed Sept. 6, 2023), the Supreme Court vacated a sealed order releasing the defendant from the S.C. Department of Corrections after he served only 19 years of his 35-year prison sentence. While the Court was split 3-2, all members of the Court were troubled by the underlying secret backroom meetings resulting in a sealed order devoid of any public reasoning for releasing a convicted murderer 16 years early.

There is ample blame to go around in the *Price* matter, but it appears to us that the defendant's lawyer, Rep. Rutherford, was able to exert extraordinary influence to obtain a remarkably egregious result.

After the *Price* matter was publicly reported, Governor McMaster called for a review of secret release orders, which revealed other questionable matters involving Rep. Rutherford. These revelations undermine our judicial system and highlight the reasons public confidence is waning in how we select our judges.

Just one week after the *Price* decision, a newspaper reported on another case involving one of Rep. Rutherford's clients: a two-time drug trafficker facing a mandatory prison sentence. The defendant pled guilty on the eve of trial and Rep. Rutherford convinced the judge to allow the defendant to remain out on our streets by ordering a highly questionable Pre-Sentence Investigation (PSI). **The sentencing was then deferred for three years.** See Caitlin Ashworth, "Problems in long-deferred drug trafficking case echo issues raised in Jeroid Price case," THE POST AND COURIER (Sept. 13, 2023). Never in our many years of collective prosecutorial experience have we seen a two-time drug trafficker receive a PSI, much less have his sentence deferred for three years. This, however, is what JMSC member Todd Rutherford convinced a judge to award his client. The defendant was re-arrested during those three years, again represented by JMSC member Todd Rutherford, and allowed out on bond. Arguably, the defendant may *never* have been sentenced if the media had not reported on his case. See Will Folks, "Justice Deferred: Another South Carolina Lawyer-Legislator Scam", FITSNEWS (Aug. 4, 2023).

Last week, it was reported that after another secret court proceeding, Rep. Rutherford obtained a 12-year early release for a convicted home-invader and kidnapper who repeatedly shot a man. See Glenn Smith, "Nude pics and Jolly Ranchers power SC kidnapper's early release from prison," THE POST AND COURIER (Oct. 6, 2023). The newspaper reported that the circuit court's order made no mention of what, specifically, the inmate did to warrant such mercy, but a subsequent arrest warrant for a prison officer accused her of providing an inmate with nude photos, candy, and sunflower seeds. The charges against the officer were later dismissed. As for the early release of the violent inmate, it is yet another case involving JMSC member Todd Rutherford convincing a state judge who must come before him on JMSC to violate our laws by closing the courtroom to the public. See "Editorial: Latest secret early release of SC convict raises more questions" THE POST AND COURIER (Oct. 12, 2023).

We believe the improper appearance created by Rep. Rutherford exerting this sort of undue influence stems from his membership on JMSC, which allows him to pick which judicial candidates are nominated for election by the General Assembly. The fact that Rep. Rutherford believes it is his prerogative to pick judges was on full display in Strickland v. Richland County Legislative Delegation, Appellate Case No. 2023-001130 (filed Aug. 10, 2023), another shameful episode in which the Supreme Court held that a county legislative delegation violated a statute requiring them to forward the only qualified candidate to the Governor for consideration. Rep. Rutherford and some of his colleagues sought to illegitimately reopen the nomination process even though the sole applicant—a respected and long-serving judge in Richland County—was found well-qualified by the JMSC.

In our opinion, these recent examples are demonstrative of a lack of regard for the rule of law. Quite frankly, it is shocking that Rep. Rutherford remains in such an important position, and that lawyer-legislators on JMISC have such influence over our judiciary. Trust us when we say that Rep. Rutherford's tactics are not unique. Lawyer-legislators have undue influence over our judiciary. We can provide countless other instances under oath. Removing lawyer-legislators will not cure all of the JMISC's ills, but it will eradicate one symptom and you have the authority to do it. Exercising your authority to remove them from the JMISC will send a clear message that you take judicial reform seriously, and you intend to do everything in your power to restore faith in our judicial system.

South Carolina Code § 2-19-10(B) grants both of you authority to appoint members to the JMISC. With the power to appoint comes the power to remove. We urge you to replace all lawyer-legislators with non-lawyer members to serve until the General Assembly acts to reform this troubled committee.

Sincerely,

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