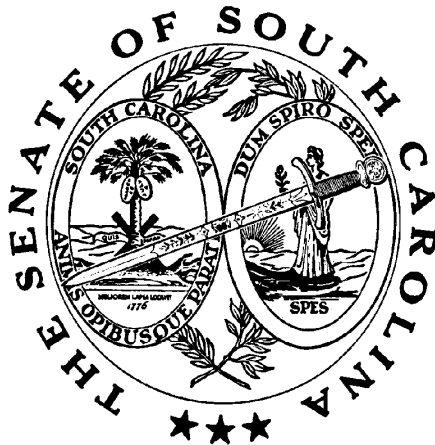


NO. 36

**JOURNAL**  
**OF THE**  
**SENATE**  
**OF THE**  
**STATE OF SOUTH CAROLINA**



REGULAR SESSION BEGINNING TUESDAY, JANUARY 10, 2023

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FRIDAY, MARCH 10, 2023

**Friday, March 10, 2023**  
**(Local Session)**

~~Indicates Matter Stricken~~

Indicates New Matter

The Senate assembled at 11:00 A.M., the hour to which it stood adjourned, and was called to order by the ACTING PRESIDENT, Senator SCOTT.

**CO-SPONSOR ADDED**

The following co-sponsors were added to the respective Bills:

S. 527    Sen. Young

S. 569    Sen. M. Johnson

**ADDENDUM TO THE JOURNAL**

The following remarks by Senator PEELER were ordered printed in the Journal of January 24, 2023:

**Remarks by Senator PEELER**

I'm not going to let him off this easy. Thank you, Mr. PRESIDENT, members of the Senate, it is an honor for me to be here to recognize my good friend NIKKI SETZLER. I told this story the other night -- it is a true story. As I was getting out of my truck in the garage, Senator MASSEY was leaving his car. He said, "Senator PEELER, I was up late last night and didn't get much sleep." I replied, "Really?" "Yes," he said, "Somebody told me how to access YouTube and I got to see all the inaugurals back from 1970 and on. I got to sit and watch you age overnight." Senator SETZLER, you sat here and watched me age in real time!

I have to thank Senator SETZLER, he was a semi-freshman when I was a sure enough freshman. He took me under his wing and gave me some advice. I said, "Let me give you some advice." The other award, Senator SETZLER, we can give you is he is the best dressed Senator in the Nation. He gets that award, but I'll take credit for it. I asked, "Senator SETZLER, you ever thought about getting contacts?" He replied, "Ada Jane said I ought to get contacts." I added, "While you're at it, a silk tie doesn't cost much more than those polyester ties." He took my advice. He is the best dressed Senator I think in the Nation.

On a serious note, I was the Majority Leader for a period of time when Senator SETZLER was the Minority Leader. It was an absolute joy working with him. Everything that you've heard is absolutely true! He

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is easy to work with. When he wants to do something, it's for the betterment of this State. I am honored and privileged to know Senator SETZLER, Ada Jane and his family. My favorite one is attending Clemson today. Thank you.

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**ADDENDUM TO THE JOURNAL**

The following remarks by Senator CASH were ordered printed in the Journal of January 26, 2023:

**Remarks by Senator CASH**

Thank you, Mr. PRESIDENT. The gist of this amendment is to remove the Supreme Court election from the elections that will be scheduled for next Wednesday, February 1<sup>st</sup>. By delaying this election, it would give us time to pass Senator MASSEY's Bill, which many of us just co-sponsored when it was read across the desk. If you weren't in the Chamber or weren't listening when Senator MASSEY introduced his Bill -- his Bill would remove the limitation that we currently have of only having three candidates available on a ballot. Once Senator MASSEY's Bill passes, the JMSC could provide a slate of candidates that included all qualified candidates according to that Bill and I believe hopefully this could allow us to have a Supreme Court election within a few months at the most. I understand that delaying a Supreme Court election would be an unusual step, but we are dealing with what many people have said to me in private conversations -- what many of us believe to be a constitutional crisis -- judicial activism, legislating from the bench. There's quite a bit of background to those phrases.

This past Sunday, January 22<sup>nd</sup> was the 50th anniversary of Roe v. Wade. Probably the most egregious example of legislating from the bench of the Supreme Court creating the policy for the Nation out of thin air that I know of. As a result of that decision, over 64 million unborn children have been killed by abortion. Thankfully, Roe v. Wade was overturned this past summer, but what I'm talking about happened in Roe v. Wade recently happened in South Carolina. The Heartbeat Law in South Carolina was struck down. I have talked with numerous people who say this is no different than what happened in Roe v. Wade including attorneys who have assured me that the state decision is just as bad if not worse than what the Supreme Court gave us in Roe v. Wade. If the state decision was just as bad if not worse, in my book that qualifies as a constitutional crisis in South Carolina. The same era of Roe v. Wade has been repeated in South Carolina.

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How do we respond though? What is a proper response to that? Our judicial elections have come under a bright spotlight. We all realize that. Judicial philosophy of a candidate has become, if it wasn't already the number one criteria for many legislators. Not geography, not race, not gender -- judicial philosophy has rightfully become the number one criteria for many legislators. I'm not saying that those other criteria aren't of some secondary importance. I believe that we would all agree that they are. The heightened scrutiny I'm talking about has been most noticeable in the Supreme Court election. I recently sat in on a screening of the three candidates that lasted almost four hours. I took ten pages of notes of what these candidates had to say to us as they answered various questions. They all assured us they understood separation of powers and believed in judicial restraint. In essence and quite frankly even verbatim they said to us, if legislation says the sky is green, well, then the sky is green. If you can believe it, not just in this race but in every race, all of a sudden every candidate is a strict constructionist. Not only have the candidates themselves been scrutinized but the process of selecting the candidates has received a lot of attention.

Judicial reform is in vogue. I believe there's going to be a lot of talk about various aspects of judicial reform, both in the House and in the Senate I've heard enough of the ideas, and I'm sure I've not heard all of them, just enough to know there's going to be a wide variance of opinion on what judicial reform should include, and whether we can agree on these different things. I'm not sure just because there's so many various ways that you could change the process if that's what we're trying to do. But I will say this. Of the legislators I've talked with, I haven't talked with any who didn't think that removing the limitation of three candidates for a race -- I haven't talked with any who didn't think that was a good idea. Give us all the qualified candidates on the slate and let us choose from all. Whether it be one or two or three or five or seven. I don't think that's too difficult for us to then decide which candidate we want to support and to vote accordingly. But the current process whereby a select committee prescreens and only gives us at most three candidates is broken.

I was not here whenever that rule or law was made. I'm just saying I don't think it's a good one and think Senator MASSEY's Bill should be passed. We should have a slate of candidates of all qualified before we vote on the next Supreme Court Justice. Supreme Court Justices in South Carolina serve for ten years -- just had a three-two decision I believe was legislating from the bench. Who we put on the bench is going to be

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occupying a pretty important spot. I'm not saying we do have a candidate. I'm not saying we don't. Do we have the best candidate if you agree with what I believe which is -- do we have the best candidate. I have no way of knowing that because all the candidates who applied are not on the ballot. And if it was known more than three could be qualified, you might have some additional candidates out there who would run for the seat. I have been through three elections -- third election I was elected to the Senate. Every election I was in up to then had between six and eight candidates in it. In which case it was not unusual to be involved in a runoff.

If I had to go through a prescreening process in my races or you had to go through a prescreening process in your races I would not be here and some of y'all may not be here. Some committee was going to say, we're only going to let three people in this race and here they are, that's not right. Anyone qualified to run can be signed up on the ballot, right? I believe this needs to change and I believe it needs to change before we elect someone who is going to serve for ten years. I don't know about you, but I really don't think I'm going to be sitting in this Chamber ten years from now. If we put someone on the bench and they're not what you think they are, you might not be around in ten years to vote against them when they're up for re-election.

I believe it's important we have confidence to try to choose the best candidate we have, and I don't know that we can do that. By the law itself we can only have three candidates. So, I'm suggesting a delay in this election, and I will think there's a couple of advantages to this. One advantage is this -- I believe that having any kind of judicial reform is going to be contentious and difficult to achieve because we have different ideas, for instance, about who should be on the right. There's going to be various competing ideas as to how that committee is comprised. I believe if we can take the most fundamental things in Senator MASSEY's Bill and limit it to that and bring it before this Body quickly, I believe it could be passed. I will tell you this -- if we can't pass a Bill to remove that limitation of three, if we can't pass that Bill in the Senate, then I definitely don't want to go forward with an election, because that will show that things are really broken, if we can't pass Senator MASSEY's Bill.

However, this Body and the Chamber across the aisle can do about anything they want to in short order if they want to do it, right? So, we all know that Senator MASSEY's Bill could probably be passed in both Chambers in a matter of weeks if that's what the leadership wants to do.

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We could then proceed on that basis to have a slate of candidates that was open to additional people and as I said in my introductory comments, I believe the whole process of election could take place within a few months. If we just go ahead, forge ahead with this election of this Supreme Court Justice, well, now, that takes the heat off passing that Bill, doesn't it? There's no real pressure to pass that Bill. You know, I've been in the Chamber long enough to know that a lot of good ideas around here just never get done, because once you can find a way to delay them and stall them, they just don't get what they need to get across the finish line. If we delay this election that Bill will be in the spotlight, and I believe the Bill can and should be moved and passed quickly -- very, very simple idea.

So, the first thing is, I believe delaying this election will allow us to get that Bill passed and I'm determined if that's going to be the minimum of judicial reform in this State that all qualified candidates be on the ballot. Everything else, who gets to be on the committee, all these other ideas there we're going to fight over endlessly are not so important to me as that one. Because whether that committee is controlled by conservatives, liberals, or moderates, if we can get all the qualified candidates on the ballot, then that means who is on that committee and how it's selected doesn't become quite so important as it is right now. So, number one, I think it would help us to pass Senator MASSEY's Bill and as soon as we pass that Bill, I believe we could then have an election and maybe we would end up with the same person we have here. I'm not saying we won. But we would have a choice. Those who might want to run for the Supreme Court would have a choice to go before the Screening Committee and find out if they're qualified or not, and then we could do our job from there. Say, well, you know, that would be leaving an empty spot for a couple of months. Well, I've been told, because I've talked with the Majority Leader, that when we have this election next year for -- for replacing the Chief Justice, that the way that all works we're likely to have an opening on the Supreme Court there that's not filled for several months. Maybe even as long as a year because you have to elect -- you have to choose the person who is going to be the next Chief Justice and then once that happens then you have to have the judicial screening for who is going to fill that seat that's become empty. So, the fact that we could have a seat empty for a few months, I'm not going to consider to be a great distraction or reason not to -- not to do what I'm asking this Body to do. So that's it. I'm not going to try to hold up this election. I'm not going to talk unnecessarily. This is what I believe

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is a judicious thing to do given the fact that we are in a constitutional crisis and it's very important as to who goes on to our Supreme Court.

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**ADDENDUM TO THE JOURNAL**

The following remarks by Senator DAVIS were ordered printed in the Journal of February 23, 2023:

**Remarks by Senator DAVIS**

Did you know it is very rare we have an issue like this before us and there are important things to explore as we debate it? I am not going to be long, maybe five or ten minutes, but I think there are some important points to be made here. Are you aware that I support the death penalty? Are you aware that the reasons individuals give in support of the death penalty are either, it is necessary as a deterrent, it is necessary to provide justice for the family members of those who were killed, or it is necessary in a broader justice sense for an individual who has taken a life to surrender a life?

There are various public policy reasons given by those who support the death penalty. Did you know that Science Magazine and many journals have done an exhaustive study of three decades worth of executions and capital punishment? They determined that in approximately 4% of the cases you are executing a person who is innocent. Now, that varies depending upon the statistician, but no one is going to dispute there are going to be instances when somebody who is innocent is executed. Did you know those who support the death penalty take the position, when you balance those public policy reasons, that I stated -- whether it is deterrence, justice, or whatever it is -- that those public policy reasons justify the taking of an innocent life? And did you know when I am thinking that through, I am remembering the abortion debate and those who say that life under every single circumstance must be protected? That there is no countervailing right that you can balance against it. Women's liberty is not a right you can counterbalance against it. Would you agree with me that there is a bit of a disconnect in the reasoning process between those who argue that there should be a ban on abortions from the time of conception, that life is absolute, that all innocent life needs to be protected, and that there is no sufficient countervailing balance or social good to balance against that in that context? But in the death penalty context, they are perfectly willing to

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allow an innocent person to be executed because of those countervailing public policy benefits.

I just wanted to point out that I think there is hypocrisy between those two positions. Did you know, that as a matter of fact, an innocent person is going to be executed at some point in time? We know that. Yet we do it anyway because of the corresponding public benefits. I am just not sure why those who support the death penalty and make that argument do not apply that same reasoning to abortion. Thank you.

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**ADDENDUM TO THE JOURNAL**

The following remarks by Senator K. JOHNSON were ordered printed in the Journal of February 23, 2023:

**Remarks by Senator K. JOHNSON**

Thank you, Mr. PRESIDENT. Members, yesterday when we voted a second reading on this Bill I think the vote was 39 to 5, and I was one of those five that voted against the Bill. I think I convinced myself that I lean against the death penalty. Now, keep in mind that I'm hard on criminals and I don't like crime, and I tend to like for people to be punished especially for the more heinous crime; however, as we've just heard in the last exchange, there are studies that show that about 4.1% of people who are on death row or who have been executed were innocent. I don't think that there is any justification for executing an innocent person. I also think that giving a person life plus one hundred years or life without the possibility of parole in a lot of cases is a harsher penalty than the death penalty. I think sometimes the death penalty is too easy for some people.

We sat here a month or so ago and the majority of the Body was stating adamantly how pro-life they are. I speak for myself, and I said then during that debate that I had a hard time understanding their reasons as to how they feel as they do. I have a hard time reconciling a person being so strongly pro-life, and then here we are now on a different Bill and they're in favor for the death penalty. I wouldn't have as hard of a time with that if it weren't for the fact, as I said before, we're executing all these people and we have some people on death row who are 100% innocent. There is one in every twenty-five being executed for a crime they didn't commit, but if that were just one that would be one too many.

The other problem I had with this Bill is that we want to shield the identity of those who are involved in this, such as pharmacists, doctors,



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and others who are involved; however, in the case of abortion, if the woman wants to exercise her right to have the baby aborted, we are not trying to shield her identity. I think the Bill we passed a few weeks ago says, if a woman decides that she wants to have an abortion because the baby was conceived through rape, she can do so but a lot of information must be reported to the police department, and it is filed on record. If the baby was aborted due to a fetal anomaly or due to risking the life of the mother, there is also some reporting that must be done. The woman doesn't have this shield like the people who are involved in the death penalty. That is why I voted against it. I don't think that we should have the right to kill people because they kill people. I think that there are severe and harsh punishments that can be meted out that come short of killing people. Again, I say that because when we do that, we are killing innocent people and we have killed innocent people. If the data is correct, what we have here in the death penalty, is one in twenty-five of those people that have been executed, or, one in twenty-five of those folks who are waiting to be executed are innocent. Thank you, Mr. PRESIDENT.

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**MOTION ADOPTED**

On motion of Senator SABB, with unanimous consent, the Senate stood adjourned out of respect to the memory of Mr. Shaheed Woodard of Lake City, S.C. Shaheed was a loving son and brother who will be dearly missed.

**ADJOURNMENT**

At 11:04 A.M., on motion of Senator SHEALY, the Senate adjourned to meet next Tuesday, March 21, 2023, at 12:00 P.M.

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