

House Concurrent Resolution No. 5006

By Committee on Judiciary

1-21

1 A PROPOSITION to amend the constitution of the state of Kansas by
2 revising article 3 thereof, relating to the judiciary.

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4 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*
5 *members elected (or appointed) and qualified to the House of*
6 *Representatives and two-thirds of the members elected (or appointed)*
7 *and qualified to the Senate concurring therein:*

8 Section 1. The following proposition to amend the constitution of
9 the state of Kansas shall be submitted to the qualified electors of the state
10 for their approval or rejection: Article 3 of the constitution of the state of
11 Kansas is hereby revised to read as follows:

"Article 3.—JUDICIAL

12
13 **"§ 1. Judicial power; seals; rules.** The judicial power of
14 this state shall be vested exclusively in one court of justice,
15 which shall be divided into one supreme court, one court of
16 appeals, district courts, and such other courts as are provided by
17 law; and all courts of record shall have a seal. The supreme
18 court shall have general administrative authority over all courts
19 in this state.

20 **"§ 2. Supreme court.** The supreme court shall consist of
21 not less than seven justices who shall be selected as provided by
22 this article. All cases shall be heard with not fewer than four
23 justices sitting and the concurrence of a majority of the justices
24 sitting and of not fewer than four justices shall be necessary for
25 a decision. The term of office of the justices shall be six years
26 except as hereinafter provided. The justice who is senior in
27 continuous term of service shall be chief justice, and in case two
28 or more have continuously served during the same period the
29 senior in age of these shall be chief justice. A justice may
30 decline or resign from the office of chief justice without
31 resigning from the court. Upon such declination or resignation,
32 the justice who is next senior in continuous term of service shall
33 become chief justice. During incapacity of a chief justice, the
34 duties, powers and emoluments of the office shall devolve upon
35 the justice who is next senior in continuous service.

36 **"§ 3. Jurisdiction and terms.** The supreme court shall

1 have original jurisdiction in proceedings in quo warranto,
2 mandamus, and habeas corpus; and such appellate jurisdiction
3 as may be provided by law. It shall hold one term each year at
4 the seat of government and such other terms at such places as
5 may be provided by law, and its jurisdiction shall be co-
6 extensive with the state.

7 **"§ 4. Reporter; clerk.** There shall be appointed, by the
8 justices of the supreme court, a reporter and clerk of such court,
9 who shall hold their offices two years, and whose duties shall be
10 prescribed by law.

11 **"§ 5. Selection of justices of the supreme court.** (a) (1)
12 Any vacancy occurring in the office of any justice of the
13 supreme court and any position to be open thereon as a result of
14 enlargement of the court, or the retirement or failure of an
15 incumbent to file such justice's declaration of candidacy to be
16 retained in office as hereinafter required, or failure of a justice
17 to be elected to be retained in office, shall be filled by
18 appointment by the governor of one of three persons possessing
19 the qualifications of office who shall be nominated and whose
20 names shall be submitted to the governor by the supreme court
21 nominating commission established as hereinafter provided.

22 (2) Whenever a vacancy occurs or will occur or a position
23 opens on the supreme court, the clerk of the supreme court shall
24 promptly give notice to the governor.

25 (3) In event of the failure of the governor to make the
26 appointment within 60 days from the time the names of the
27 nominees are submitted to the governor, the chief justice of the
28 supreme court shall make the appointment from such nominees.

29 (4) Whenever a vacancy in the office of justice of the
30 supreme court exists at the time the appointment to fill such
31 vacancy is made pursuant to this section, the appointment shall
32 be effective at the time it is made, but where an appointment is
33 made pursuant to this section to fill a vacancy which will occur
34 at a future date, such appointment shall not take effect until
35 such date.

36 (b) (1) Each justice of the supreme court appointed
37 pursuant to subsection (a) shall hold office for an initial term
38 ending on the second Monday in January following the first
39 general election that occurs after the expiration of 12 months in
40 office.

41 (2) Not less than 60 days prior to the holding of the general
42 election next preceding the expiration of such justice's term of
43 office, any justice of the supreme court may file in the office of

1 the secretary of state a declaration of candidacy for election to
2 be retained in office. If a declaration is not so filed, the position
3 held by such justice shall be open from the expiration of such
4 justice's term of office. If such declaration is filed, such justice's
5 name shall be submitted at the next general election to the
6 electors of the state on a separate judicial ballot, without party
7 designation, reading substantially as follows:

8 "Shall (Here insert name of justice.), Justice of the Supreme
9 Court, be retained in office?"

10 (3) If a majority of those voting on the question vote
11 against retaining such justice in office, the position or office
12 which such justice holds shall be open upon the expiration of
13 such justice's term of office; otherwise such justice shall, unless
14 removed for cause, remain in office for the regular term of six
15 years from the second Monday in January following such
16 election. At the expiration of each term such justice shall, unless
17 by law such justice is compelled to retire, be eligible for
18 retention in office by election in the manner prescribed in this
19 section.

20 (4) If a majority of those voting on the question vote
21 against the justice's retention, the secretary of state, following
22 the final canvass of votes on the question, shall certify the
23 results to the clerk of the supreme court. Any such justice who
24 has not been retained in office pursuant to this section shall not
25 be eligible for nomination or appointment to the office of justice
26 of the supreme court prior to the expiration of six years after the
27 expiration of the justice's term of office.

28 (d) A nonpartisan nominating commission whose duty it
29 shall be to nominate and submit to the governor the names of
30 persons for appointment to fill vacancies in the office of any
31 justice of the supreme court and any judge of the court of
32 appeals is hereby established, and shall be known as the
33 "supreme court nominating commission." The commission shall
34 be organized as hereinafter provided.

35 (e) The supreme court nominating commission shall be
36 composed as follows: One member, who shall be chairperson,
37 chosen from among their number by the members of the bar
38 who are residents of and licensed in Kansas; one member from
39 each congressional district chosen from among their number by
40 the resident members of the bar in each such district; and one
41 member, who is not a lawyer, from each congressional district,
42 appointed by the governor from among the residents of each
43 such district.

1 (f) The terms of office, the procedure for selection and
2 certification of the members of the commission and provision
3 for their compensation or expenses shall be as provided by the
4 legislature.

5 (g) No member of the supreme court nominating
6 commission shall, while a member, hold any other public office
7 by appointment or any official position in a political party or for
8 six months thereafter be eligible for nomination for the office of
9 justice of the supreme court or judge of the court of appeals.
10 The commission may act only by the concurrence of a majority
11 of its members.

12 **"§ 6. Court of appeals.** (a) (1) The court of appeals shall
13 consist of not less than 14 judges. Any vacancy occurring in the
14 office of any judge of the court of appeals and any position to
15 be open on the court of appeals as a result of enlargement of
16 such court, or the retirement or failure of an incumbent to file
17 such judge's declaration of candidacy to be retained in office as
18 hereinafter required, or failure of a judge to be elected to be
19 retained in office, shall be filled by appointment by the
20 governor of one of three persons possessing the qualifications
21 of office who shall be nominated and whose names shall be
22 submitted to the governor by the supreme court nominating
23 commission established by section 5 of this article.

24 (2) Whenever a vacancy occurs or will occur or a position
25 opens on the court of appeals, the clerk of the supreme court
26 shall promptly give notice to the governor.

27 (3) In event of the failure of the governor to make the
28 appointment within 60 days from the time the names of the
29 nominees are submitted to the governor, the chief justice of the
30 supreme court shall make the appointment from such nominees.

31 (4) Whenever a vacancy in the office of judge of the court
32 of appeals exists at the time the appointment to fill such
33 vacancy is made pursuant to this section, the appointment shall
34 be effective at the time it is made, but where an appointment is
35 made pursuant to this section to fill a vacancy which will occur
36 at a future date, such appointment shall not take effect until
37 such date.

38 (b) (1) Each judge of the court of appeals appointed
39 pursuant to subsection (a) shall hold office for an initial term
40 ending on the second Monday in January following the first
41 general election that occurs after the expiration of 12 months in
42 office.

43 (2) Not less than 60 days prior to the holding of the general

1 election next preceding the expiration of such judge's term of
2 office, any judge of the court of appeals may file in the office of
3 the secretary of state a declaration of candidacy for election to
4 be retained in office. If a declaration is not so filed, the position
5 held by such judge shall be open from the expiration of such
6 judge's term of office. If such declaration is filed, such judge's
7 name shall be submitted at the next general election to the
8 electors of the state on a separate judicial ballot, without party
9 designation, reading substantially as follows:

10 "Shall (Here insert name of judge.), Judge of the Court of
11 Appeals, be retained in office?"

12 (3) If a majority of those voting on the question vote
13 against retaining such judge in office, the position or office
14 which such judge holds shall be open upon the expiration of
15 such judge's term of office; otherwise such judge shall, unless
16 removed for cause, remain in office for the regular term of four
17 years from the second Monday in January following such
18 election. At the expiration of each term such judge shall, unless
19 by law such judge is compelled to retire, be eligible for
20 retention in office by election in the manner prescribed in this
21 section.

22 (4) If a majority of those voting on the question vote
23 against the judge's retention, the secretary of state, following the
24 final canvass of votes on the question, shall certify the results to
25 the clerk of the supreme court. Any such judge who has not
26 been retained in office pursuant to this section shall not be
27 eligible for nomination or appointment to the office of judge of
28 the court of appeals prior to the expiration of four years after the
29 expiration of the judge's term of office.

30 (c) The supreme court may assign a judge of the court of
31 appeals to serve temporarily on the supreme court.

32 "**§ 7. District courts.** (a) The state shall be divided into
33 judicial districts as provided by law. Each judicial district shall
34 have at least one district judge. The term of office of each judge
35 of the district court shall be four years. District court shall be
36 held at such times and places as may be provided by law. The
37 district judges shall be elected by the electors of the respective
38 judicial districts unless the electors of a judicial district have
39 adopted and not subsequently rejected a method of nonpartisan
40 selection. The legislature shall provide a method of nonpartisan
41 selection of district judges and for the manner of submission
42 and resubmission thereof to the electors of a judicial district. A
43 nonpartisan method of selection of district judges may be

1 adopted, and once adopted may be rejected, only by a majority
2 of electors of a judicial district voting on the question at an
3 election in which the proposition is submitted. Whenever a
4 vacancy occurs in the office of district judge, it shall be filled
5 by appointment by the governor until the next general election
6 that occurs more than 30 days after such vacancy, or as may be
7 provided by such nonpartisan method of selection.

8 (b) The district courts shall have such jurisdiction in their
9 respective districts as may be provided by law.

10 (c) The legislature shall provide for clerks of the district
11 courts.

12 (d) Provision may be made by law for judges pro tem of
13 the district court.

14 (e) The supreme court or any justice thereof shall have the
15 power to assign judges of district courts temporarily to other
16 districts.

17 (f) The supreme court may assign a district judge to serve
18 temporarily on the supreme court.

19 (g) The supreme court or the court of appeals may assign a
20 district judge to serve temporarily on the court of appeals.

21 **"§ 8. Qualifications of justices and judges.** Justices of the
22 supreme court, judges of the court of appeals and judges of the
23 district courts shall be at least 30 years of age and shall be duly
24 authorized by the supreme court of Kansas to practice law in the
25 courts of this state and shall possess such other qualifications as
26 may be prescribed by law.

27 **"§ 9. Prohibition of political activity by justices and
28 certain judges.** No justice of the supreme court who is
29 appointed or retained under the procedure of section 5 of this
30 article, nor any judge of the court of appeals who is appointed
31 or retained under the procedure of section 6 of this article, nor
32 any judge of the district court holding office under a
33 nonpartisan method authorized in subsection (a) of section 7 of
34 this article, shall directly or indirectly make any contribution to
35 or hold any office in a political party or organization or take
36 part in any political campaign.

37 **"§ 10. Extension of terms until successor qualified.** All
38 judicial officers shall hold their offices until their successors
39 shall have qualified.

40 **"§ 11. Compensation of justices and judges; certain
41 limitation.** The justices of the supreme court, judges of the
42 court of appeals and judges of the district courts shall receive
43 for their services such compensation as may be provided by

1 law, which shall not be diminished during their terms of office,
2 unless by general law applicable to all salaried officers of the
3 state. Such justices or judges shall receive no fees or perquisites
4 nor hold any other office of profit or trust under the authority of
5 the state, or the United States, except as may be provided by
6 law, or practice law during their continuance in office.

7 **"§ 12. Removal of justices and judges.** Justices of the
8 supreme court may be removed from office by impeachment
9 and conviction as prescribed in article 2 of this constitution. In
10 addition to removal by impeachment and conviction, justices
11 may be retired after appropriate hearing, upon certification to
12 the governor, by the supreme court that such justice is so
13 incapacitated as to be unable to perform adequately such
14 justice's duties. Other judges shall be subject to retirement for
15 incapacity, and to discipline, suspension and removal for cause
16 by the supreme court after appropriate hearing.

17 **"§ 13. Savings clause.** Nothing contained in this
18 amendment to the constitution shall: (a) Shorten the term of
19 office or abolish the office of any justice of the supreme court,
20 any judge of the court of appeals, any judge of the district court,
21 or any other judge of any other court who is holding office at
22 the time this amendment becomes effective, or who is holding
23 office at the time of adoption, rejection, or resubmission of a
24 nonpartisan method of selection of district judges as provided in
25 subsection (a) of section 7 of this article, and all such justices
26 and judges shall hold their respective offices for the terms for
27 which elected or appointed unless sooner removed in the
28 manner provided by law; or (b) repeal any statute of this state
29 relating to the supreme court, the supreme court nominating
30 commission, the court of appeals, district courts, or any other
31 court, or relating to the justices or judges of such courts, and
32 such statutes shall remain in force and effect until amended or
33 repealed by the legislature.

34 Sec. 2. The following statement shall be printed on the ballot with
35 the amendment as a whole:

36 *"Explanatory statement.* The purpose of this amendment is to
37 place the law concerning the court of appeals into the
38 constitution and change the nomination and appointment
39 process for judges of the court of appeals. This amendment
40 would continue in effect the current provisions of Article 3
41 of the Kansas Constitution, including the provisions
42 requiring the supreme court nominating commission to
43 nominate and submit to the governor the names of three

1 persons for appointment to fill any vacancy in the office of
2 any justice of the supreme court and requiring the governor
3 to appoint one of such persons. This amendment would
4 change the nomination and appointment process for the
5 office of judge of the court of appeals by requiring the
6 supreme court nominating commission to nominate and
7 submit to the governor the names of three persons for
8 appointment to fill any vacancy in the office of any judge of
9 the court of appeals and requiring the governor to appoint
10 one of such persons.

11 "A vote for this proposition would place the law concerning the
12 court of appeals into the constitution. The supreme court
13 nominating commission would nominate and submit to the
14 governor the names of three persons for appointment to fill
15 any vacancy in the office of any judge of the court of appeals
16 and the governor would appoint one of such persons. The
17 supreme court nominating commission would continue to
18 nominate and submit to the governor the names of three
19 persons for appointment to fill any vacancy in the office of
20 any justice of the supreme court and the governor would
21 appoint one of such persons.

22 "A vote against this proposition would leave the law concerning
23 the court of appeals in the Kansas statutes and continue in
24 effect the current nomination and appointment process in
25 which judges of the court of appeals are appointed by the
26 governor, with the consent of the senate. The supreme court
27 nominating commission would continue to nominate and
28 submit to the governor the names of three persons for
29 appointment to fill any vacancy in the office of any justice of
30 the supreme court and the governor would appoint one of
31 such persons."

32 Sec. 3. This resolution, if approved by two-thirds of the members
33 elected (or appointed) and qualified to the House of Representatives, and
34 two-thirds of the members elected (or appointed) and qualified to the
35 Senate shall be entered on the journals, together with the yeas and nays.
36 The secretary of state shall cause this resolution to be published as
37 provided by law and shall cause the proposed amendment to be submitted
38 to the electors of the state at the general election in November in the year
39 2022, unless a special election is called at a sooner date by concurrent
40 resolution of the legislature, in which case it shall be submitted to the
41 electors of the state at the special election.