

## Senate Concurrent Resolution No. 1610

By Committee on Federal and State Affairs

3-27

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

3  
4 *Be it resolved by the Legislature of the State of Kansas, two-thirds of*  
5 *the members elected (or appointed) and qualified to the Senate and two-*  
6 *thirds of the members elected (or appointed) and qualified to the House*  
7 *of Representatives 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 for two years, and whose duties  
10 shall be 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 on the supreme court  
14 as a result of enlargement of such court, or the retirement or  
15 failure of an incumbent to file such justice's declaration of  
16 candidacy to be retained in office as hereinafter required, or  
17 failure of a justice to be elected to be retained in office, shall be  
18 filled by appointment by the governor, with the consent of the  
19 senate, of a person possessing the qualifications of office.

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

23 (3) In the event of the failure of the governor to make the  
24 appointment within 60 days from the date such vacancy  
25 occurred or such position became open, the chief justice of the  
26 supreme court, with the consent of the senate, shall make the  
27 appointment of a person possessing the qualifications of office.

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

35 (b) No person appointed pursuant to subsection (a) shall  
36 assume the office of justice of the supreme court until the  
37 senate, by an affirmative vote of the majority of all members of  
38 the senate then elected or appointed and qualified, consents to  
39 such appointment. The senate shall vote to consent to any such  
40 appointment not later than 60 days after such appointment is  
41 received by the senate. If the senate is not in session and will  
42 not be in session within the 60-day time limitation, the senate  
43 shall vote to consent to any such appointment not later than 20

1 days after the senate begins its next session. In the event a  
2 majority of the senate does not vote to consent to the  
3 appointment, the governor, within 60 days after the senate vote  
4 on the previous appointee, shall appoint another person  
5 possessing the qualifications of office, and such subsequent  
6 appointment shall be considered by the senate in the same  
7 procedure as provided in this article. The same appointment and  
8 consent procedure shall be followed until a valid appointment  
9 has been made. No person who has been previously appointed  
10 but did not receive the consent of the senate shall be appointed  
11 again for the same vacancy. If the senate fails to vote on an  
12 appointment within the time limitation imposed by this  
13 subsection, the senate shall be deemed to have given consent to  
14 such appointment.

15 (c) (1) Each justice of the supreme court appointed  
16 pursuant to subsection (a) and consented to pursuant to  
17 subsection (b) shall hold office for an initial term ending on the  
18 second Monday in January following the first general election  
19 that occurs after the expiration of 12 months in office.

20 (2) Not less than 60 days prior to the holding of the general  
21 election next preceding the expiration of the term of any justice  
22 of the supreme court, the justice may file in the office of the  
23 secretary of state a declaration of candidacy for retention in  
24 office. If a declaration is not filed as provided in this section,  
25 the position held by the justice shall be vacant upon the  
26 expiration of the justice's term of office. If such declaration is  
27 filed, the justice's name shall be submitted at the next general  
28 election to the electors of the state on a separate judicial ballot,  
29 without party designation, reading substantially as follows:  
30 "Shall (Here insert name of justice.), Justice of the Supreme  
31 Court, be retained in office?"

32 (3) If a majority of those voting on the question vote  
33 against retaining the justice in office, the position that the  
34 justice holds shall be vacant upon the expiration of the justice's  
35 term of office. Otherwise, unless the justice is removed for  
36 cause, the justice shall remain in office for the regular term of  
37 six years from the second Monday in January following the  
38 election. At the expiration of each term, unless by law the  
39 justice is compelled to retire, the justice shall be eligible for  
40 retention in office by election in the manner prescribed in this  
41 section.

42 (4) If a majority of those voting on the question vote  
43 against the justice's retention, the secretary of state, following

1 the final canvass of votes on the question, shall certify the  
2 results to the clerk of the supreme court. Any such justice who  
3 has not been retained in office pursuant to this section shall not  
4 be eligible for appointment to the office of justice of the  
5 supreme court prior to the expiration of six years after the  
6 expiration of the justice's term of office.

7 **"§ 6. Court of appeals.** (a) (1) The court of appeals shall  
8 consist of 14 judges whose positions shall be numbered one  
9 through 14. The court of appeals shall be a part of the court of  
10 justice in which the judicial power of the state is vested by  
11 section 1 of this article and shall be subject to the general  
12 administrative authority of the supreme court. The court of  
13 appeals shall have such jurisdiction over appeals in civil and  
14 criminal cases and from administrative bodies and officers of  
15 the state as may be prescribed by law, and shall have such  
16 original jurisdiction as may be necessary to the complete  
17 determination of any cause on review. During the pendency of  
18 any appeal, the court of appeals, on such terms as may be just,  
19 may make an order suspending further proceedings in the court  
20 below until the decision of the court of appeals.

21 (2) Any vacancy occurring in the office of any judge of the  
22 court of appeals and any position to be open on the court of  
23 appeals as a result of enlargement of such court, or the  
24 retirement or failure of an incumbent to file such judge's  
25 declaration of candidacy to be retained in office as hereinafter  
26 required, or failure of a judge to be elected to be retained in  
27 office, shall be filled by appointment by the governor, with the  
28 consent of the senate, of a person possessing the qualifications  
29 of office.

30 (3) Whenever a vacancy occurs, will occur or a position  
31 opens on the court of appeals, the clerk of the supreme court  
32 shall promptly give notice to the governor.

33 (4) In the event of the failure of the governor to make the  
34 appointment within 60 days from the date such vacancy  
35 occurred or such position became open, the chief justice of the  
36 supreme court, with the consent of the senate, shall make the  
37 appointment of a person possessing the qualifications of office.

38 (5) Whenever a vacancy in the office of judge of the court  
39 of appeals exists at the time the appointment to fill such  
40 vacancy is made pursuant to this section, the appointment shall  
41 be effective at the time it is made, but where an appointment is  
42 made pursuant to this section to fill a vacancy which will occur  
43 at a future date, such appointment shall not take effect until

1 such date.

2 (b) No person appointed pursuant to subsection (a) shall  
3 assume the office of judge of the court of appeals until the  
4 senate, by an affirmative vote of the majority of all members of  
5 the senate then elected or appointed and qualified, consents to  
6 such appointment. The senate shall vote to consent to any such  
7 appointment not later than 60 days after such appointment is  
8 received by the senate. If the senate is not in session and will  
9 not be in session within the 60-day time limitation, the senate  
10 shall vote to consent to any such appointment not later than 20  
11 days after the senate begins its next session. In the event a  
12 majority of the senate does not vote to consent to the  
13 appointment, the governor, within 60 days after the senate vote  
14 on the previous appointee, shall appoint another person  
15 possessing the qualifications of office, and such subsequent  
16 appointment shall be considered by the senate in the same  
17 procedure as provided in this article. The same appointment and  
18 consent procedure shall be followed until a valid appointment  
19 has been made. No person who has been previously appointed  
20 but did not receive the consent of the senate shall be appointed  
21 again for the same vacancy. If the senate fails to vote on an  
22 appointment within the time limitation imposed by this  
23 subsection, the senate shall be deemed to have given consent to  
24 such appointment.

25 (c) (1) Each judge of the court of appeals appointed  
26 pursuant to subsection (a) and consented to pursuant to  
27 subsection (b) shall hold office for an initial term ending on the  
28 second Monday in January following the first general election  
29 that occurs after the expiration of 12 months in office.

30 (2) Not less than 60 days prior to the holding of the general  
31 election next preceding the expiration of the term of any judge  
32 of the court of appeals, the judge may file in the office of the  
33 secretary of state a declaration of candidacy for retention in  
34 office. If a declaration is not filed as provided in this section,  
35 the position held by the judge shall be vacant upon the  
36 expiration of the judge's term of office. If such declaration is  
37 filed, the judge's name shall be submitted at the next general  
38 election to the electors of the state on a separate judicial ballot,  
39 without party designation, reading substantially as follows:  
40 "Shall (Here insert name of judge.), Judge of the Court of  
41 Appeals, be retained in office?"

42 (3) If a majority of those voting on the question vote  
43 against retaining the judge in office, the position that the judge

1 holds shall be vacant upon the expiration of the judge's term of  
2 office. Otherwise, unless the judge is removed for cause, the  
3 judge shall remain in office for the regular term of four years  
4 from the second Monday in January following the election. At  
5 the expiration of each term, unless by law the judge is  
6 compelled to retire, the judge shall be eligible for retention in  
7 office by election in the manner prescribed in this section.

8 (4) If a majority of those voting on the question vote  
9 against the judge's retention, the secretary of state, following the  
10 final canvass of votes on the question, shall certify the results to  
11 the clerk of the supreme court. Any such judge who has not  
12 been retained in office pursuant to this section shall not be  
13 eligible for appointment to the office of judge of the court of  
14 appeals prior to the expiration of four years after the expiration  
15 of the judge's term of office.

16 (d) The supreme court may assign a judge of the court of  
17 appeals to serve temporarily on the supreme court.

18 **"§ 7. District courts.** (a) The state shall be divided into  
19 judicial districts as provided by law. Each judicial district shall  
20 have at least one district judge. The term of office of each judge  
21 of the district court shall be four years. District court shall be  
22 held at such times and places as may be provided by law. The  
23 district judges shall be elected by the electors of the respective  
24 judicial districts unless the electors of a judicial district have  
25 adopted and not subsequently rejected a method of nonpartisan  
26 selection. The legislature shall provide a method of nonpartisan  
27 selection of district judges and for the manner of submission  
28 and resubmission thereof to the electors of a judicial district. A  
29 nonpartisan method of selection of district judges may be  
30 adopted, and once adopted may be rejected, only by a majority  
31 of electors of a judicial district voting on the question at an  
32 election in which the proposition is submitted. Whenever a  
33 vacancy occurs in the office of district judge, it shall be filled  
34 by appointment by the governor until the next general election  
35 that occurs more than 30 days after such vacancy, or as may be  
36 provided by such nonpartisan method of selection.

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

39 (c) The legislature shall provide for clerks of the district  
40 courts.

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

43 (e) The supreme court or any justice thereof shall have the

1 power to assign judges of district courts temporarily to other  
2 districts.

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

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

7 **"§ 8. Qualifications of justices and judges.** Justices of the  
8 supreme court, judges of the court of appeals and judges of the  
9 district courts shall be at least 30 years of age and shall be duly  
10 authorized by the supreme court of Kansas to practice law in the  
11 courts of this state and shall possess such other qualifications as  
12 may be prescribed by law.

13 **"§ 9. Prohibition of political activity by justices and  
14 certain judges.** No justice of the supreme court who is  
15 appointed or retained under the procedure of section 5 of this  
16 article, nor any judge of the court of appeals who is appointed  
17 or retained under the procedure of section 6 of this article, nor  
18 any judge of the district court holding office under a  
19 nonpartisan method authorized in section 7(a) of this article,  
20 shall directly or indirectly make any contribution to or hold any  
21 office in a political party or organization or take part in any  
22 political campaign.

23 **"§ 10. Extension of terms until successor qualified.** All  
24 judicial officers shall hold their offices until their successors  
25 shall have qualified.

26 **"§ 11. Compensation of justices and judges; certain  
27 limitation.** The justices of the supreme court, judges of the  
28 court of appeals and judges of the district courts shall receive  
29 for their services such compensation as may be provided by  
30 law, which shall not be diminished during their terms of office,  
31 unless by general law applicable to all salaried officers of the  
32 state. Such justices or judges shall receive no fees or perquisites  
33 nor hold any other office of profit or trust under the authority of  
34 the state, or the United States except as may be provided by law,  
35 or practice law during their continuance in office.

36 **"§ 12. Removal of justices and judges.** Justices of the  
37 supreme court may be removed from office by impeachment  
38 and conviction as prescribed in article 2 of this constitution. In  
39 addition to removal by impeachment and conviction, justices  
40 may be retired after appropriate hearing, upon certification to  
41 the governor, by the supreme court that such justice is so  
42 incapacitated as to be unable to perform adequately such  
43 justice's duties. Other judges shall be subject to retirement for

1 incapacity, and to discipline, suspension and removal for cause  
2 by the supreme court after appropriate hearing.

3 "§ 13. **Savings clause.** Nothing contained in this  
4 amendment to the constitution shall: (a) Shorten the term of  
5 office or abolish the office of any justice of the supreme court,  
6 any judge of the court of appeals, any judge of the district court,  
7 or any other judge of any other court who is holding office at  
8 the time this amendment becomes effective, or who is holding  
9 office at the time of adoption, rejection, or resubmission of a  
10 nonpartisan method of selection of district judges as provided in  
11 section 7(a) of this article, and all such justices and judges shall  
12 hold their respective offices for the terms for which elected or  
13 appointed, unless sooner removed in the manner provided by  
14 law; (b) repeal any statute of this state relating to the supreme  
15 court, the supreme court nominating commission, the court of  
16 appeals, district courts, or any other court, or relating to the  
17 justices or judges of such courts, and such statutes shall remain  
18 in force and effect until amended or repealed by the legislature."

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

21 "*Explanatory statement.* The purpose of this amendment is to  
22 place the law concerning the court of appeals into the  
23 constitution and to do away with the supreme court  
24 nominating commission. The governor will appoint a  
25 qualified person, or if the governor fails to act, the chief  
26 justice of the supreme court would appoint a qualified  
27 person, and such person's appointment would require the  
28 consent of the senate. If the senate does not consent to the  
29 appointment by a majority vote, the governor would then  
30 appoint another qualified person, and such person's  
31 appointment would again go to the senate for consent. The  
32 same appointment and consent procedure would be followed  
33 until a valid appointment is made. If the senate fails to vote  
34 on an appointment within 60 days, it will be considered that  
35 the senate has given consent to the appointment.

36 "A vote for this proposition would provide a procedure whereby  
37 the governor or chief justice would appoint a person to be a  
38 supreme court justice or court of appeals judge, and the  
39 senate, by majority vote, would consent to the appointment  
40 of the supreme court justice or court of appeals judge.

41 "A vote against this proposition would continue the current  
42 system in which justices of the supreme court are appointed  
43 by the governor from a list of three individuals submitted by



1           the supreme court nominating commission, and judges of the  
2           court of appeals are appointed by the governor, with the  
3           consent of the senate."

4           Sec. 3. This resolution, if approved by two-thirds of the members  
5           elected (or appointed) and qualified to the Senate, and two-thirds of the  
6           members elected (or appointed) and qualified to the House of  
7           Representatives shall be entered on the journals, together with the yeas  
8           and nays. The secretary of state shall cause this resolution to be published  
9           as provided by law and shall cause the proposed amendment to be  
10          submitted to the electors of the state at the general election in November  
11          in the year 2020, unless a special election is called at a sooner date by  
12          concurrent resolution of the legislature, in which case it shall be  
13          submitted to the electors of the state at the special election.