

## House Concurrent Resolution No. 5006

By Committee on Judiciary

1-20

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 amended to read as follows:

### "Article 3.—JUDICIAL

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

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

34 (b) Justices of the supreme court: (1) Shall hold their offices  
35 during good behavior; (2) shall be subject to the retirement,  
36 discipline and removal for cause provisions of section 12 of article

1 3 of the constitution of the state of Kansas; and (3) shall not be  
2 subject to a retention election.

3 **"§ 3. Jurisdiction and terms.** The supreme court shall have  
4 original jurisdiction in proceedings in quo warranto, mandamus,  
5 and habeas corpus; and such appellate jurisdiction as may be  
6 provided by law. It shall hold one term each year at the seat of  
7 government and such other terms at such places as may be  
8 provided by law, and its jurisdiction shall be co-extensive with the  
9 state.

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

14 **"§ 5. Selection of justices of the supreme court.** (a) (1) Any  
15 vacancy occurring in the office of any justice of the supreme court  
16 and any position to be open on the supreme court as a result of  
17 enlargement of such court, or the retirement of an incumbent, shall  
18 be filled by appointment by the governor, with the consent of the  
19 senate, of one of three persons possessing the qualifications of  
20 office who shall be nominated and whose names shall be submitted  
21 to the governor by the supreme court nominating commission  
22 established as hereinafter provided.

23 (2) In event of the failure of the governor to make the  
24 appointment within 60 days from the time the names of the  
25 nominees are submitted to the governor, the chief justice of the  
26 supreme court shall make the appointment from such nominees,  
27 with the consent of the senate.

28 (b) Whenever a vacancy occurs, will occur or position opens  
29 on the supreme court, the clerk of the supreme court shall promptly  
30 give notice to the governor.

31 (c) No person appointed pursuant to subsection (a) shall  
32 assume the office of justice of the supreme court until the senate,  
33 by an affirmative vote of the majority of all members of the senate  
34 then elected or appointed and qualified, consents to such  
35 appointment. The senate shall vote to consent to any such  
36 appointment not later than 30 days after such appointment is  
37 received by the senate. If the senate is not in session and will not  
38 be in session within the 30-day time limitation, the president of the  
39 senate shall convene the senate for the sole purpose of voting on  
40 such appointment and no other action shall be in order during such  
41 session. In the event a majority of the senate does not vote to  
42 consent to the appointment, the governor, within 30 days after the  
43 senate vote on the previous appointee, shall appoint another person

1 possessing the qualifications of office, whose name has been  
2 submitted to the governor by the supreme court nominating  
3 commission, and such subsequent appointment shall be considered  
4 by the senate in the same procedure as provided in this article. The  
5 same appointment and consent procedure shall be followed until a  
6 valid appointment has been made. No person who has been  
7 previously appointed but did not receive the consent of the senate  
8 shall be appointed again for the same vacancy. If the senate fails to  
9 vote on an appointment within the time limitation imposed by this  
10 subsection, the senate shall be deemed to have given consent to  
11 such appointment.

12 (d) A nonpartisan nominating commission whose duty it shall  
13 be to nominate and submit to the governor the names of persons for  
14 appointment to fill vacancies in the office of any justice of the  
15 supreme court is hereby established, and shall be known as the  
16 "supreme court nominating commission." Such commission shall  
17 be organized as hereinafter provided.

18 (e) The supreme court nominating commission shall be  
19 composed as follows: Three members shall be appointed by the  
20 speaker of the house of representatives, three members shall be  
21 appointed by the president of the senate and three members shall  
22 be appointed by the governor. All members shall be residents of  
23 Kansas. At least one member appointed by the speaker of the house  
24 of representatives, at least one member appointed by the president  
25 of the senate and at least one member appointed by the governor  
26 shall be members of the bar in good standing and licensed in  
27 Kansas. The governor shall appoint one of the nine members of the  
28 supreme court nominating commission to serve as such  
29 commission's chairperson.

30 (f) The terms of office, the procedure for selection and  
31 certification of the members of the commission and provision for  
32 their compensation or expenses shall be as provided by the  
33 legislature.

34 (g) No member of the supreme court nominating commission  
35 shall, while a member, hold any other public office by appointment  
36 or any official position in a political party or for six months  
37 thereafter be eligible for nomination for the office of justice of the  
38 supreme court. The commission may act only by the concurrence  
39 of a majority of its members.

40 (h) No justice of the supreme court serving on the supreme  
41 court on the date of ratification of this amendment by the electors  
42 of the state shall be required to stand for a retention election in  
43 order to be retained in office on such date or anytime thereafter.

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

14           (2) Any vacancy occurring in the office of any judge of the  
15 court of appeals and any position to be open on the court of appeals  
16 as a result of enlargement of such court, or the retirement of an  
17 incumbent, shall be filled by appointment by the governor, with the  
18 consent of the senate, of one of three persons possessing the  
19 qualifications of office who shall be nominated and whose names  
20 shall be submitted to the governor by the supreme court  
21 nominating commission established by section 5 of this article.

22           (3) In event of the failure of the governor to make the  
23 appointment within 60 days from the time the names of the  
24 nominees are submitted to the governor, the chief justice of the  
25 supreme court shall make the appointment from such nominees,  
26 with the consent of the senate.

27           (b) Whenever a vacancy occurs, will occur or position opens  
28 on the court of appeals, the clerk of the supreme court shall  
29 promptly give notice to the governor.

30           (c) No person appointed pursuant to subsection (a) shall  
31 assume the office of judge of the court of appeals until the senate,  
32 by an affirmative vote of the majority of all members of the senate  
33 then elected or appointed and qualified, consents to such  
34 appointment. The senate shall vote to consent to any such  
35 appointment not later than 30 days after such appointment is  
36 received by the senate. If the senate is not in session and will not  
37 be in session within the 30-day time limitation, the president of the  
38 senate shall convene the senate for the sole purpose of voting on  
39 such appointment and no other action shall be in order during such  
40 session. In the event a majority of the senate does not vote to  
41 consent to the appointment, the governor, within 30 days after the  
42 senate vote on the previous appointee, shall appoint another person  
43 possessing the qualifications of office, whose name has been

1 submitted to the governor by the supreme court nominating  
2 commission, and such subsequent appointment shall be considered  
3 by the senate in the same procedure as provided in this article. The  
4 same appointment and consent procedure shall be followed until a  
5 valid appointment has been made. No person who has been  
6 previously appointed but did not receive the consent of the senate  
7 shall be appointed again for the same vacancy. If the senate fails to  
8 vote on an appointment within the time limitation imposed by this  
9 subsection, the senate shall be deemed to have given consent to  
10 such appointment.

11 (d) Judges of the court of appeals: (1) Shall hold their offices  
12 during good behavior; (2) shall be subject to the retirement,  
13 discipline and removal for cause provisions of section 12 of article  
14 3 of the constitution of the state of Kansas; and (3) shall not be  
15 subject to a retention election.

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

18 (f) No judge of the court of appeals serving on the court of  
19 appeals on the date of ratification of this amendment by the  
20 electors of the state shall be required to stand for a retention  
21 election in order to be retained in office on such date or anytime  
22 thereafter.

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

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

1 (c) The legislature shall provide for clerks of the district  
2 courts.

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

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

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

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

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

18 **"§ 9. Prohibition of political activity by justices and  
19 certain judges.** No justice of the supreme court who is appointed  
20 under the procedure of section 5 of this article, nor any judge of the  
21 court of appeals who is appointed under the procedure of section 6  
22 of this article, nor any judge of the district court holding office  
23 under a nonpartisan method authorized in subsection (a) of section  
24 7 of this article, shall directly or indirectly make any contribution  
25 to or hold any office in a political party or organization or take part  
26 in any political campaign.

27 **"§ 10. Extension of terms until successor qualified.** All  
28 judicial officers shall hold their offices until their successors shall  
29 have qualified.

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

40 **"§ 12. Removal of justices and judges.** Justices of the  
41 supreme court may be removed from office by impeachment and  
42 conviction as prescribed in article 2 of this constitution. In addition  
43 to removal by impeachment and conviction, justices may be retired

1 after appropriate hearing, upon certification to the governor, by the  
2 supreme court that such justice is so incapacitated as to be unable  
3 to perform adequately such justice's duties. Other judges shall be  
4 subject to retirement for incapacity, and to discipline, suspension  
5 and removal for cause by the supreme court after appropriate  
6 hearing.

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

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

25 *"Explanatory statement.* The purpose of this amendment is to  
26 place the law concerning the court of appeals into the  
27 constitution, to change the procedure for selecting supreme  
28 court justices and court of appeals judges and to change the  
29 membership of the nonpartisan supreme court nominating  
30 commission. The nonpartisan supreme court nominating  
31 commission membership would be changed to include  
32 appointments by the speaker of the house of representatives  
33 and the president of the senate. The gubernatorial  
34 appointments to the commission would be reduced from four  
35 members to three members. The members of the bar would  
36 no longer elect members of the commission. The  
37 commission would continue to nominate three persons for  
38 appointment by the governor. The governor would appoint  
39 one of such persons to the office of justice of the supreme  
40 court or judge of the court of appeals, and such person's  
41 appointment would be required to be consented to by the  
42 senate. A procedure is established whereby senate consent  
43 would occur within 30 days of receiving the appointment. If

1 the senate does not consent by a majority vote, the governor  
2 would then select an appointment which would again go to  
3 the senate for consent. The same appointment and consent  
4 procedure would be followed until a valid appointment is  
5 made. If the senate fails to vote on an appointment within 30  
6 days, it will be considered that the senate has consented to  
7 the appointment. Further, the supreme court justices and  
8 court of appeals judges would hold their offices during good  
9 behavior, be subject to the retirement, discipline and removal  
10 for cause provisions of section 12 of article 3 of the Kansas  
11 constitution and would no longer be subject to a retention  
12 election.

13 "A vote for this proposition would place the law concerning the  
14 court of appeals into the constitution and provide a  
15 procedure whereby a modified supreme court nominating  
16 commission would nominate three qualified persons to the  
17 governor for each vacant office of justice of the supreme  
18 court or judge of the court of appeals. The governor or chief  
19 justice would appoint one of such persons to the office of  
20 justice of the supreme court or judge of the court of appeals  
21 and the senate, by majority vote, would consent to the  
22 appointment. The supreme court justices and court of  
23 appeals judges would hold their offices during good  
24 behavior, be subject to the retirement, discipline and removal  
25 for cause provisions of section 12 of article 3 of the Kansas  
26 constitution and would no longer be subject to a retention  
27 election.

28 "A vote against this proposition would leave the law concerning  
29 the court of appeals in the Kansas statutes and continue in  
30 effect the current procedure whereby the governor appoints  
31 judges of the court of appeals, with the consent of the senate.  
32 It would also continue in effect the current procedure  
33 whereby the supreme court nominating commission  
34 nominates three persons for the office of justice of the  
35 supreme court and the governor appoints one of such  
36 persons, with no senate consent required. Further, the  
37 justices of the supreme court would continue to hold six-year  
38 terms and be subject to retention elections."

39 Sec. 3. This resolution, if approved by two-thirds of the members  
40 elected (or appointed) and qualified to the House of Representatives, and  
41 two-thirds of the members elected (or appointed) and qualified to the  
42 Senate shall be entered on the journals, together with the yeas and nays.  
43 The secretary of state shall cause this resolution to be published as



1 provided by law and shall cause the proposed amendment to be submitted  
2 to the electors of the state at the election in August in the year 2016  
3 unless a special election is called at a sooner date by concurrent  
4 resolution of the legislature, in which case it shall be submitted to the  
5 electors of the state at the special election.