

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.

3
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

12
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.