

House Concurrent Resolution No. 5013

By Committee on Judiciary

2-10

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

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
28 two or more have continuously served during the same period
29 the 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, will occur or 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:

37 (1) One member from each congressional district who is an
38 attorney, chosen from among their number by the resident
39 members of the bar in each such district;

40 (2) five members appointed by the governor as follows:
41 One member from each congressional district; and one member
42 from the state as a whole who shall serve as the non-voting
43 chairperson of the commission; and

1 (3) six members appointed by the legislature as follows:
2 Two by the president of the senate; two by the speaker of the
3 house of representatives; one by the minority leader of the
4 senate; and one by the minority leader of the house of
5 representatives.

6 (f) The terms of office, the procedure for selection and
7 certification of the members of the commission and provision
8 for their compensation or expenses shall be as provided by the
9 legislature.

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

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

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

32 (3) In event of the failure of the governor to make the
33 appointment within 60 days from the time the names of the
34 nominees are submitted to the governor, the chief justice of the
35 supreme court shall make the appointment from such nominees.

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

43 (b) (1) Each judge of the court of appeals appointed

1 pursuant to subsection (a) shall hold office for an initial term
2 ending on the second Monday in January following the first
3 general election that occurs after the expiration of 12 months in
4 office.

5 (2) Not less than 60 days prior to the holding of the general
6 election next preceding the expiration of such judge's term of
7 office, any judge of the court of appeals may file in the office of
8 the secretary of state a declaration of candidacy for election to
9 be retained in office. If a declaration is not so filed, the position
10 held by such judge shall be open from the expiration of such
11 judge's term of office. If such declaration is filed, such judge's
12 name shall be submitted at the next general election to the
13 electors of the state on a separate judicial ballot, without party
14 designation, reading substantially as follows:

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

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

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

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

37 (d) The supreme court or the court of appeals may assign a
38 district judge to serve temporarily on the court of appeals.

39 "**§ 7. District courts.** (a) The state shall be divided into
40 judicial districts as provided by law. Each judicial district shall
41 have at least one district judge. The term of office of each judge
42 of the district court shall be four years. District court shall be
43 held at such times and places as may be provided by law. The

1 district judges shall be elected by the electors of the respective
2 judicial districts unless the electors of a judicial district have
3 adopted and not subsequently rejected a method of nonpartisan
4 selection. The legislature shall provide a method of nonpartisan
5 selection of district judges and for the manner of submission
6 and resubmission thereof to the electors of a judicial district. A
7 nonpartisan method of selection of district judges may be
8 adopted, and once adopted may be rejected, only by a majority
9 of electors of a judicial district voting on the question at an
10 election in which the proposition is submitted. Whenever a
11 vacancy occurs in the office of district judge, it shall be filled
12 by appointment by the governor until the next general election
13 that occurs more than 30 days after such vacancy, or as may be
14 provided by such nonpartisan method of selection.

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

17 (c) The legislature shall provide for clerks of the district
18 courts.

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

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

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

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

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

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

1 **"§ 10. Extension of terms until successor qualified.** All
2 judicial officers shall hold their offices until their successors
3 shall have qualified.

4 **"§ 11. Compensation of justices and judges; certain**
5 **limitation.** The justices of the supreme court, judges of the
6 court of appeals and judges of the district courts shall receive
7 for their services such compensation as may be provided by
8 law, which shall not be diminished during their terms of office,
9 unless by general law applicable to all salaried officers of the
10 state. Such justices or judges shall receive no fees or perquisites
11 nor hold any other office of profit or trust under the authority of
12 the state, or the United States, except as may be provided by
13 law, or practice law during their continuance in office.

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

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

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

43 *"Explanatory statement.* The purpose of this amendment is to

1 place the law concerning the court of appeals into the
2 constitution and to change the membership of the supreme
3 court nominating commission. This amendment would
4 continue in effect the current provision whereby the supreme
5 court nominating commission nominates three persons for
6 the office of the supreme court or court of appeals and the
7 governor appoints one of such persons. Commission
8 membership would change to: Four attorney members, one
9 attorney selected from each congressional district by the
10 resident members of the bar in each such district; five
11 members appointed by the governor as follows: One
12 member from each congressional district; and one member
13 from the state as a whole who shall serve as the non-voting
14 chairperson of the commission; and six members appointed
15 by the legislature as follows: Two by the president of the
16 senate; two by the speaker of the house of representatives;
17 one by the minority leader of the senate; and one by the
18 minority leader of the house of representatives.

19 "A vote for this proposition would place the law concerning the
20 court of appeals into the constitution and continue in effect
21 the current provision whereby the supreme court nominating
22 commission nominates three persons for the office of the
23 supreme court or court of appeals and the governor appoints
24 one of such persons. Commission membership would
25 change to: Four attorney members, one attorney selected
26 from each congressional district by the resident members of
27 the bar in each such district; five members appointed by the
28 governor, one member from each congressional district and
29 one member from the state as a whole who shall serve as the
30 non-voting chairperson of the commission; and six members
31 appointed by the legislature.

32 "A vote against this proposition would leave the law concerning
33 the court of appeals in the Kansas statutes and continue in
34 effect the current system in which judges of the court of
35 appeals are appointed by the governor, with the consent of
36 the senate. It would also continue in effect the current
37 constitutional provision whereby the supreme court
38 nominating commission nominates three persons for the
39 office of the supreme court or court of appeals and the
40 governor appoints one of such persons. Commission
41 membership would remain: One member, who shall be
42 chairman, chosen from among their number by the members
43 of the bar who are residents of and licensed in Kansas; one

1 member from each congressional district chosen from
2 among their number by the resident members of the bar in
3 each such district; and one member, who is not a lawyer,
4 from each congressional district, appointed by the governor
5 from among the residents of each such district."

6 Sec. 3. This resolution, if approved by two-thirds of the members
7 elected (or appointed) and qualified to the House of Representatives, and
8 two-thirds of the members elected (or appointed) and qualified to the
9 Senate shall be entered on the journals, together with the yeas and nays.
10 The secretary of state shall cause this resolution to be published as
11 provided by law and shall cause the proposed amendment to be submitted
12 to the electors of the state at the general election in November in the year
13 2016 unless a special election is called at a sooner date by concurrent
14 resolution of the legislature, in which case it shall be submitted to the
15 electors of the state at the special election.