House Concurrent Resolution No. 5002
By Committee on Judiciary
1-16

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

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

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

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

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

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

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

"§ 5. Selection of justices of the supreme court. (a) (1) Any vacancy occurring in the office of any justice of the supreme court and any position to be open on the supreme court as a result of enlargement of such court, or the retirement or failure of an incumbent to file such justice's declaration of candidacy to be retained in office as hereinafter required, or failure of a justice to be elected to be retained in office, shall be filled by appointment by the governor, with the consent of the senate, of a person possessing the qualifications of office.

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

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

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

(b) No person appointed pursuant to subsection (a) shall assume the office of justice of the supreme court until the senate, by an affirmative vote of the majority of all members of the senate then elected or appointed and qualified, consents to such appointment. The senate shall vote to consent to any such appointment not later than 60 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 60-day time limitation, the senate shall vote to consent to any such appointment not later than 20 days
after the senate begins its next session. In the event a majority of
the senate does not vote to consent to the appointment, the
governor, within 60 days after the senate vote on the previous
appointee, shall appoint another person possessing the
qualifications of office and such subsequent appointment shall be
considered by the senate in the same procedure as provided in
this article. The same appointment and consent procedure shall
be followed until a valid appointment has been made. No person
who has been previously appointed but did not receive the
consent of the senate shall be appointed again for the same
vacancy. If the senate fails to vote on an appointment within the
time limitation imposed by this subsection, the senate shall be
deemed to have given consent to such appointment.

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

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

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

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

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

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

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

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

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

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

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

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

(3) If a majority of those voting on the question vote against
retaining the judge in office, the position which the judge holds
shall be vacant upon the expiration of the judge's term of office.
Otherwise, unless the judge is removed for cause, the judge shall
remain in office for the regular term of four years from the
second Monday in January following the election. At the
expiration of each term, unless by law the judge is compelled to
retire, the judge shall be eligible for retention in office by
election in the manner prescribed in this section.

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

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

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

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

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

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

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

(e) The supreme court or any justice thereof shall have the
power to assign judges of district courts temporarily to other
districts.
(f) The supreme court may assign a district judge to serve temporarily on the supreme court.

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

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

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

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

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

"§ 12. Removal of justices and judges. Justices of the supreme court may be removed from office by impeachment and conviction as prescribed in article 2 of this constitution. In addition to removal by impeachment and conviction, justices may be retired after appropriate hearing, upon certification to the governor, by the supreme court that such justice is so incapacitated as to be unable to perform adequately such justice's duties. Other judges shall be subject to retirement for incapacity, and to discipline, suspension and removal for cause by the supreme court after appropriate hearing.
"§ 13. Savings clause. Nothing contained in this amendment to the constitution shall: (a) Shorten the term of office or abolish the office of any justice of the supreme court, any judge of the court of appeals, any judge of the district court, or any other judge of any other court who is holding office at the time this amendment becomes effective, or who is holding office at the time of adoption, rejection, or resubmission of a nonpartisan method of selection of district judges as provided in subsection (a) of section 7 of this article, and all such justices and judges shall hold their respective offices for the terms for which elected or appointed unless sooner removed in the manner provided by law; (b) repeal any statute of this state relating to the supreme court, the supreme court nominating commission, the court of appeals, district courts, or any other court, or relating to the justices or judges of such courts, and such statutes shall remain in force and effect until amended or repealed by the legislature."

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

"Explanatory statement. The purpose of this amendment is to place the law concerning the court of appeals into the constitution and to do away with the supreme court nominating commission. The governor will appoint a qualified person, or if the governor fails to act, the chief justice of the supreme court would appoint a qualified person, and such person's appointment would be required to be confirmed by the senate. A procedure is established whereby senate confirmation would occur within 60 days of receiving the appointment. If the senate does not confirm the appointment a majority vote, the governor would then appoint another qualified person, and such person's appointment would again go to the senate for confirmation. The same appointment and confirmation procedure would be followed until a valid appointment is made. If the senate fails to vote on an appointment within 60 days, it will be considered that the senate has confirmed the appointment.

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

"A vote against this proposition would continue in effect the current provision whereby the supreme court nominating
Sec. 3. This resolution, if approved by two-thirds of the members elected (or appointed) and qualified to the House of Representatives, and two-thirds of the members elected (or appointed) and qualified to the Senate shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as provided by law and shall cause the proposed amendment to be submitted to the electors of the state at the election in August November in the year 2014 unless a special election is called at a sooner date by concurrent resolution of the legislature, in which case it shall be submitted to the electors of the state at the special election.