

## House Concurrent Resolution No. 5012

By Representative Oharah

2-10

---

9 A PROPOSITION to amend sections 5 and 8 of article 3 of the consti-  
10 tution of the state of Kansas; providing for the election of justices of  
11 the supreme court.

12

13 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*  
14 *members elected (or appointed) and qualified to the House of Repre-*  
15 *sentatives and two-thirds of the members elected (or appointed) to the*  
16 *Senate concurring therein:*

17

18 Section 1. The following proposition to amend the constitution of the  
19 state of Kansas shall be submitted to the qualified electors of the state  
20 for their approval or rejection: Sections 5 and 8 of article 3 of the con-  
21 stitution of the state of Kansas are hereby amended as follows:

22

23 **§ 5. Selection of justices of the supreme court.** (a) Any vacancy  
24 occurring in the office of any justice of the supreme court and any position  
25 to be open thereon as a result of enlargement of the court, or the retire-  
26 ment or failure of an incumbent to file his declaration of candidacy to  
27 succeed himself as hereinafter required, or failure of a justice to be  
28 elected to succeed himself, shall be filled by ~~appointment by the governor~~  
29 ~~of one of three persons possessing the qualifications of office who shall~~  
30 ~~be nominated and whose names shall be submitted to the governor by~~  
31 ~~the supreme court nominating commission established as hereinafter~~  
32 ~~provided:~~

33

34 ~~(b) In event of the failure of the governor to make the appointment~~  
35 ~~within sixty days from the time the names of the nominees are submitted~~  
36 ~~to him, the chief justice of the supreme court shall make the appointment~~  
37 ~~from such nominees.~~

38

39 ~~(c) Each justice of the supreme court appointed pursuant to provi-~~  
40 ~~sions of subsection (a) of this section shall hold office for an initial term~~  
41 ~~ending on the second Monday in January following the first general elec-~~  
42 ~~tion that occurs after the expiration of twelve months in office. Not less~~  
43 ~~than sixty days prior to the holding of the general election next preceding~~  
44 ~~the expiration of his term of office, any justice of the supreme court may~~  
45 ~~file in the office of the secretary of state a declaration of candidacy for~~  
46 ~~election to succeed himself. If a declaration is not so filed, the position~~  
47 ~~held by such justice shall be open from the expiration of his term of office.~~

1 ~~If such declaration is filed, his name shall be submitted at the next general~~  
2 ~~election to the electors of the state on a separate judicial ballot, without~~  
3 ~~party designation, reading substantially as follows:~~

4 ~~“Shall \_\_\_\_\_~~  
5 ~~(Here insert name of justice.)~~

6 ~~\_\_\_\_\_~~  
7 ~~(Here insert the title of the court.)~~

8 ~~be retained in office.”~~

9 ~~If a majority of those voting on the question vote against retaining him~~  
10 ~~in office, the position or office which he holds shall be open upon the~~  
11 ~~expiration of his term of office, otherwise he shall, unless removed for~~  
12 ~~cause, remain in office for the regular term of six years from the second~~  
13 ~~Monday in January following such election. At the expiration of each term~~  
14 ~~he shall, unless by law he is compelled to retire, be eligible for retention~~  
15 ~~in office by election in the manner prescribed in this section.~~

16 ~~—(d) A nonpartisan nominating commission whose duty it shall be to~~  
17 ~~nominate and submit to the governor the names of persons for appoint-~~  
18 ~~ment to fill vacancies in the office of any justice of the supreme court is~~  
19 ~~hereby established, and shall be known as the “supreme court nominating~~  
20 ~~commission.” Said commission shall be organized as hereinafter provided:~~

21 ~~—(e) The supreme court nominating commission shall be composed as~~  
22 ~~follows: One member, who shall be chairman, chosen from among their~~  
23 ~~number by the members of the bar who are residents of and licensed in~~  
24 ~~Kansas; one member from each congressional district chosen from among~~  
25 ~~their number by the resident members of the bar in each such district;~~  
26 ~~and one member, who is not a lawyer, from each congressional district,~~  
27 ~~appointed by the governor from among the residents of each such district.~~

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

31 ~~—(g) No member of the supreme court nominating commission shall,~~  
32 ~~while he is a member, hold any other public office by appointment or~~  
33 ~~any official position in a political party or for six months thereafter be~~  
34 ~~eligible for nomination for the office of justice of the supreme court. The~~  
35 ~~commission may act only by the concurrence of a majority of its members~~  
36 ~~election at the next general election. Such election shall be nonpartisan~~  
37 ~~and from the state at large. Persons who have been admitted to practice~~  
38 ~~law for a minimum of five years and are in good standing before the state~~  
39 ~~supreme court may file in the office of the Secretary of State a declaration~~  
40 ~~of candidacy for election to fill a vacancy on the supreme court. Such~~  
41 ~~candidates shall be subject to a primary election held at least 60 days~~  
42 ~~before the next general election. The three candidates receiving the~~  
43 ~~greatest number of votes at the primary election shall have their names~~

1 placed on the ballot for the general election, and the candidate receiving  
2 the greatest number of votes at the general election shall succeed to the  
3 vacant supreme court position. Each justice so elected shall hold office for  
4 a term of six years which term shall commence on the second Monday in  
5 January following the general election. Justices of the supreme court may  
6 seek reelection.

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

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

16 *“Explanatory statement.* The purpose of this amendment is to provide  
17 for the election of justices of the supreme court through nonpartisan  
18 election as a candidate at large for the entire state. The three candidates  
19 receiving the greatest number of votes at a primary election would be  
20 placed on the ballot at the general election with the candidate receiving  
21 the greatest number of votes at the general election succeeding to the  
22 vacant position on the supreme court. Such election would be for a term  
23 of six years and would be subject to reelection. The successful candidate  
24 would be installed in January of the year following the general election  
25 the same as other candidates elected from the state at large.

26 “A vote for this proposition would cause justices of the supreme court  
27 to be elected by popular election at general elections for terms of six  
28 years.

29 “A vote against this proposition would retain the current system of  
30 having justices of the supreme court being appointed by the governor  
31 from a list of three individuals submitted by the supreme court nominat-  
32 ing commission.”

33 Sec. 3. This resolution, if approved by two-thirds of the members  
34 elected (or appointed) and qualified to the House of Representatives, and  
35 two-thirds of the members elected (or appointed) and qualified to the  
36 Senate shall be entered on the journals, together with the yeas and nays.  
37 The secretary of state shall cause this resolution to be published as pro-  
38 vided by law and shall cause the proposed amendment to be submitted  
39 to the electors of the state at the general election on November 7, 2006,  
40 unless a special election is called at a sooner date by concurrent resolution  
41 of the legislature, in which case it shall be submitted to the electors of  
42 the state at the special election.