

**Senate Concurrent Resolution No. 1606**

By Senators Wagle and D. Schmidt, Apple, Barnett, Barone, Brownlee, Bruce, Donovan, Gilstrap, Huelskamp, Jordan, Journey, McGinn, Morris, O'Connor, Ostmeyer, Palmer, Petersen, Pine, Pyle, Reitz, V. Schmidt, Schodorf, Taddiken, Teichman, Umbarger, Wilson and Wysong

2-9

14 A PROPOSITION to amend section 5 of article 3 of the constitution of  
15 the state of Kansas, relating to the selection of justices of the supreme  
16 court.

17  
18 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*  
19 *members elected (or appointed) and qualified to the Senate and two-*  
20 *thirds of the members elected (or appointed) and qualified to the House*  
21 *of Representatives concurring therein:*

22 Section 1. The following proposition to amend the constitution of the  
23 state of Kansas shall be submitted to the qualified electors of the state  
24 for their approval or rejection: Section 5 of article 3 of the constitution  
25 of the state of Kansas is hereby amended to read as follows:

26 “§ 5. **Selection of justices of the supreme court.** (a) Any va-  
27 cancy occurring in the office of any justice of the supreme court  
28 and any position to be open thereon as a result of enlargement  
29 of the court, or the retirement or failure of an incumbent to file  
30 ~~his~~ *such justice's* declaration of candidacy to ~~succeed himself~~ *be*  
31 *retained in office* as hereinafter required, or failure of a justice  
32 to be elected to ~~succeed himself~~ *be retained in office*, shall be  
33 filled by appointment by the governor, *with the consent of the*  
34 *senate*, of one of three persons possessing the qualifications of  
35 office who shall be nominated and whose names shall be sub-  
36 mitted to the governor by the supreme court nominating com-  
37 mission established as hereinafter provided.

38 (b) In event of the failure of the governor to make the appoint-  
39 ment within sixty days from the time the names of the nominees  
40 are submitted to ~~him~~ *the governor*, the chief justice of the su-  
41 preme court, *with the consent of the senate*, shall make the ap-  
42 pointment from such nominees.

43 (c) *No person appointed pursuant to subsection (a) or (b) of this*

1           section shall assume the office of justice of the supreme court  
 2           until the senate, by an affirmative vote of the majority of all  
 3           members of the senate then elected or appointed and qualified,  
 4           consents to such appointment. The senate shall vote to consent  
 5           to any such appointment not later than 30 days after such ap-  
 6           pointment is received by the senate. If the senate is not in session  
 7           and will not be in session within the 30 day time limitation, the  
 8           president of the senate shall convene the senate for the sole pur-  
 9           pose of voting on such appointment and no other action shall be  
 10          in order during such session. In the event a majority of the senate  
 11          does not vote to consent to the appointment, **the governor may**  
 12          **appoint another of the three persons whose names were sub-**  
 13          **mitted to the governor pursuant to subsection (a) and such**  
 14          **subsequent appointment shall be considered by the senate**  
 15          **in the same procedure as provided in this article. If the gov-**  
 16          **ernor fails to make such subsequent appointment within 15**  
 17          **days after the senate vote on the previous appointee or if**  
 18          **all three persons whose names were submitted to the gov-**  
 19          **ernor pursuant to subsection (a) have been considered by,**  
 20          **but did not receive the consent of, the senate, then** the su-  
 21          preme court nominating commission shall submit to the governor  
 22          three additional names possessing the qualifications of office and  
 23          such nominations shall be considered in the same procedure as  
 24          provided in this article. The same nomination, appointment and  
 25          consent procedure shall be followed until a valid appointment  
 26          has been made. No person who has been previously appointed  
 27          but did not receive the consent of the senate shall be nominated  
 28          **or appointed** again for the same vacancy. If the senate fails to  
 29          vote on an appointment within the 30 day time limitation, the  
 30          senate shall be deemed to have given consent to such  
 31          appointment.

32          ~~(d)~~ (d) Each justice of the supreme court appointed pursuant to  
 33          provisions of subsection (a) or (b) of this section *and consented*  
 34          *to pursuant to the provisions of subsection (c) of this section* shall  
 35          hold office for an initial term ending on the second Monday in  
 36          January following the first general election that occurs after the  
 37          expiration of twelve months in office. Not less than sixty days  
 38          prior to the holding of the general election next preceding the  
 39          expiration of ~~his~~ *such justice's* term of office, any justice of the  
 40          supreme court may file in the office of the secretary of state a  
 41          declaration of candidacy for election to ~~succeed himself~~ *be re-*  
 42          *tained in office*. If a declaration is not so filed, the position held  
 43          by such justice shall be open from the expiration of ~~his~~ *such*

1 *justice's* term of office. If such declaration is filed, ~~his~~ *such jus-*  
 2 *tice's* name shall be submitted at the next general election to the  
 3 electors of the state on a separate judicial ballot, without party  
 4 designation, reading substantially as follows:

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

7 \_\_\_\_\_  
 8 (Here insert the title of the court.)  
 9 be retained in office?”

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

19 ~~(d)~~ (e) A nonpartisan nominating commission whose duty it shall  
 20 be to nominate and submit to the governor the names of persons  
 21 for appointment to fill vacancies in the office of any justice of  
 22 the supreme court is hereby established, and shall be known as  
 23 the “supreme court nominating commission.” Said commission  
 24 shall be organized as hereinafter provided.

25 ~~(e)~~ (f) The supreme court nominating commission shall be com-  
 26 posed as follows: One member, who shall be ~~chairman~~ *chair-*  
 27 *person*, chosen from among their number by the members of  
 28 the bar who are residents of and licensed in Kansas; one member  
 29 from each congressional district chosen from among their num-  
 30 ber by the resident members of the bar in each such district; and  
 31 one member, who is not a lawyer, from each congressional dis-  
 32 trict, appointed by the governor from among the residents of  
 33 each such district.

34 ~~(f)~~ (g) The terms of office, the procedure for selection and certi-  
 35 fication of the members of the commission and provision for  
 36 their compensation or expenses shall be as provided by the  
 37 legislature.

38 ~~(g)~~ (h) No member of the supreme court nominating commission  
 39 shall, while ~~he~~ *such person* is a member, hold any other public  
 40 office by appointment or any official position in a political party  
 41 or for six months thereafter be eligible for nomination for the  
 42 office of justice of the supreme court. The commission may act  
 43 only by the concurrence of a majority of its members.”

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

3     “*Explanatory statement.* The purpose of this amendment is to re-  
4     quire persons appointed by the governor or the chief justice to  
5     the office of justice of the supreme court to be consented to by  
6     the senate. A procedure is established whereby senate consent  
7     would occur with 30 days of receiving the appointment. If the  
8     senate does not consent by a majority vote, the supreme court  
9     nominating commission would submit three more names to the  
10    governor. The governor would then select an appointment which  
11    would again go to the senate for consent. The same nomination,  
12    appointment and consent procedure would be followed until a  
13    valid appointment is made. If the senate fails to vote on an ap-  
14    pointment within 30 days, it will be considered that the senate  
15    has consented to the appointment.

16    “A vote for this proposition would provide a procedure whereby the  
17    senate, by majority vote, would consent to the appointment, by  
18    the governor or chief justice, of supreme court justices.

19    “A vote against this proposition would continue in effect the current  
20    provision whereby the supreme court nominating commission  
21    nominates three persons for the office of the supreme court and  
22    the governor appoints one of such persons.”

23    Sec. 3. This resolution, if approved by two-thirds of the members  
24    elected (or appointed) and qualified to the Senate, and two-thirds of the  
25    members elected (or appointed) and qualified to the House of Repre-  
26    sentatives shall be entered on the journals, together with the yeas and  
27    nays. The secretary of state shall cause this resolution to be published as  
28    provided by law and shall cause the proposed amendment to be submitted  
29    to the electors of the state at the general election in November in the  
30    year 2006 unless a special election is called at a sooner date by concurrent  
31    resolution of the legislature, in which case it shall be submitted to the  
32    electors of the state at the special election.