

House Concurrent Resolution No. 5033

By Representatives Kinzer, Beamer, Brown, Carlson, Carter, Dahl, DeCastro, Faber, George, Grange, Hutchins, Huy, Kelley, Kelsey, Kiegerl, Mast, McLeland, Oharah, Olson, Siegfried, Watkins and Weber

1-26

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

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

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

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

36 (b) In event of the failure of the governor to make the appoint-
37 ment within sixty days from the ~~time the names of the nominees~~
38 ~~are submitted to him~~ *date such vacancy occurred or position be-*
39 *came open*, the chief justice of the supreme court, *with the consent*
40 *of the senate*, shall make the appointment ~~from such nominees~~ *of a*
41 *person possessing the qualifications of office.*

42 (c) *No person appointed pursuant to subsection (a) or (b) of this*
43 *section shall assume the office of justice of the supreme court until*

1 *the senate, by an affirmative vote of the majority of all members of*
 2 *the senate then elected or appointed and qualified, consents to such*
 3 *appointment. The senate shall vote to consent to any such appoint-*
 4 *ment not later than 30 days after such appointment is received by*
 5 *the senate. If the senate is not in session and will not be in session*
 6 *within the 30-day time limitation, the president of the senate shall*
 7 *convene the senate for the sole purpose of voting on such appoint-*
 8 *ment and no other action shall be in order during such session. In*
 9 *the event a majority of the senate does not vote to consent to the*
 10 *appointment, the governor, within 30 days after the senate vote on*
 11 *the previous appointee, shall appoint another person possessing the*
 12 *qualifications of office and such subsequent appointment shall be*
 13 *considered by the senate in the same procedure as provided in this*
 14 *article. The same appointment and consent procedure shall be fol-*
 15 *lowed until a valid appointment has been made. No person who has*
 16 *been previously appointed but did not receive the consent of the*
 17 *senate shall be appointed again for the same vacancy. If the senate*
 18 *fails to vote on an appointment within the 30-day time limitation,*
 19 *the senate shall be deemed to have given consent to such*
 20 *appointment.*

21 ~~(c)~~ (d) Each justice of the supreme court appointed pursuant
 22 to provisions of subsection (a) or (b) of this section *and consented*
 23 *to pursuant to the provisions of subsection (c) of this section* shall
 24 hold office for an initial term ending on the second Monday in
 25 January following the first general election that occurs after the
 26 expiration of twelve months in office. Not less than sixty days prior
 27 to the holding of the general election next preceding the expiration
 28 of ~~his~~ *such justice's* term of office, any justice of the supreme court
 29 may file in the office of the secretary of state a declaration of candi-
 30 dacy for election to ~~succeed himself~~ *be retained in office*. If a
 31 declaration is not so filed, the position held by such justice shall be
 32 open from the expiration of ~~his~~ *such justice's* term of office. If such
 33 declaration is filed, ~~his~~ *such justice's* name shall be submitted at the
 34 next general election to the electors of the state on a separate ju-
 35 dicial ballot, without party designation, reading substantially as
 36 follows:

37 "Shall _____

(Here insert name of justice.)

38
 39 (Here insert the title of the court.)

40
 41 be retained in office?"

42 If a majority of those voting on the question vote against retaining
 43 ~~him~~ *such justice* in office, the position or office which ~~he~~ *such justice*

1 holds shall be open upon the expiration of ~~his~~ *such justice's* term of
2 office; otherwise ~~he~~ *such justice* shall, unless removed for cause,
3 remain in office for the regular term of six years from the second
4 Monday in January following such election. At the expiration of each
5 term ~~he~~ *such justice* shall, unless by law ~~he~~ *such justice* is compelled
6 to retire, be eligible for retention in office by election in the manner
7 prescribed in this section.

8 ~~(d) A nonpartisan nominating commission whose duty it shall~~
9 ~~be to nominate and submit to the governor the names of persons~~
10 ~~for appointment to fill vacancies in the office of any justice of the~~
11 ~~supreme court is hereby established, and shall be known as the~~
12 ~~“supreme court nominating commission.” Said commission shall be~~
13 ~~organized as hereinafter provided.~~

14 ~~—(e) The supreme court nominating commission shall be com-~~
15 ~~posed as follows: One member, who shall be chairman, chosen from~~
16 ~~among their number by the members of the bar who are residents~~
17 ~~of and licensed in Kansas; one member from each congressional~~
18 ~~district chosen from among their number by the resident members~~
19 ~~of the bar in each such district, and one member, who is not a~~
20 ~~lawyer, from each congressional district, appointed by the governor~~
21 ~~from among the residents of each such district.~~

22 ~~—(f) The terms of office, the procedure for selection and certi-~~
23 ~~fication of the members of the commission and provision for their~~
24 ~~compensation or expenses shall be as provided by the legislature.~~

25 ~~—(g) No member of the supreme court nominating commission~~
26 ~~shall, while he is a member, hold any other public office by ap-~~
27 ~~pointment or any official position in a political party or for six~~
28 ~~months thereafter be eligible for nomination for the office of justice~~
29 ~~of the supreme court. The commission may act only by the con-~~
30 ~~currency of a majority of its members.”~~

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

33 *“Explanatory statement.* The purpose of this amendment is to do
34 away with the nonpartisan supreme court nominating commis-
35 sion. The governor will appoint a qualified person, or if the gov-
36 ernor fails to act, the chief justice of the supreme court would
37 appoint a qualified person, and such person’s appointment would
38 be required to be consented to by the senate. A procedure is
39 established whereby senate consent would occur with 30 days of
40 receiving the appointment. If the senate does not consent by a
41 majority vote, the governor would then select an appointment
42 which would again go to the senate for consent. The same ap-
43 pointment and consent procedure would be followed until a valid

1 appointment is made. If the senate fails to vote on an appoint-
2 ment within 30 days, it will be considered that the senate has
3 consented to the appointment.

4 “A vote for this proposition would provide a procedure whereby the
5 governor or chief justice would appoint a person to be a supreme
6 court justice and the senate, by majority vote, would consent to
7 the appointment of supreme court justices.

8 “A vote against this proposition would continue in effect the current
9 provision whereby the supreme court nominating commission
10 nominates three persons for the office of the supreme court and
11 the governor appoints one of such persons.

12 Sec. 3. This resolution, if approved by two-thirds of the members
13 elected (or appointed) and qualified to the House of Representatives, and
14 two-thirds of the members elected (or appointed) and qualified to the
15 Senate shall be entered on the journals, together with the yeas and nays.
16 The secretary of state shall cause this resolution to be published as pro-
17 vided by law and shall cause the proposed amendment to be submitted
18 to the electors of the state at the general election in the year 2006 unless
19 a special election is called at a sooner date by concurrent resolution of
20 the legislature, in which case it shall be submitted to the electors of the
21 state at the special election.