

## House Concurrent Resolution No. 5008

By Representatives Kinzer, Brown, Brunk, Carlson, Donohoe, Grange, Hodge, Huebert, Kelley, Kiegerl, Mast, Masterson, Merrick, Judy Morrison, Peck, Siegfried and Watkins

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

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

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

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

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

41 (c) *No person appointed pursuant to subsection (a) or (b) of this*  
42 *section shall assume the office of justice of the supreme court until the*  
43 *senate, by an affirmative vote of the majority of all members of the*



1 January following such election. At the expiration of each term ~~he~~ *such*  
 2 *justice* shall, unless by law ~~he~~ *such justice* is compelled to retire, be  
 3 eligible for retention in office by election in the manner prescribed in  
 4 this section.

5 ~~(d) A nonpartisan nominating commission whose duty it shall be~~  
 6 ~~to nominate and submit to the governor the names of persons for~~  
 7 ~~appointment to fill vacancies in the office of any justice of the supreme~~  
 8 ~~court is hereby established, and shall be known as the "supreme court~~  
 9 ~~nominating commission." Said commission shall be organized as here-~~  
 10 ~~inafter provided.~~

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

19 ~~—(f) The terms of office, the procedure for selection and certifica-~~  
 20 ~~tion of the members of the commission and provision for their com-~~  
 21 ~~ensation or expenses shall be as provided by the legislature.~~

22 ~~—(g) No member of the supreme court nominating commission~~  
 23 ~~shall, while he is a member, hold any other public office by appoint-~~  
 24 ~~ment or any official position in a political party or for six months there-~~  
 25 ~~after be eligible for nomination for the office of justice of the supreme~~  
 26 ~~court. The commission may act only by the concurrence of a majority~~  
 27 ~~of its members."~~

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

30 *"Explanatory statement.* The purpose of this amendment is to do away  
 31 with the nonpartisan supreme court nominating commission. The  
 32 governor will appoint a qualified person, or if the governor fails to  
 33 act, the chief justice of the supreme court would appoint a qualified  
 34 person, and such person's appointment would be required to be  
 35 consented to by the senate. A procedure is established whereby  
 36 senate consent would occur with 30 days of receiving the appoint-  
 37 ment. If the senate does not consent by a majority vote, the governor  
 38 would then select an appointment which would again go to the sen-  
 39 ate for consent. The same appointment and consent procedure  
 40 would be followed until a valid appointment is made. If the senate  
 41 fails to vote on an appointment within 30 days, it will be considered  
 42 that the senate has consented to the appointment.

43 *"A vote for this proposition would provide a procedure whereby the*

1           governor or chief justice would appoint a person to be a supreme  
2           court justice and the senate, by majority vote, would consent to the  
3           appointment of supreme court justices.

4           “A vote against this proposition would continue in effect the current  
5           provision whereby the supreme court nominating commission nomi-  
6           nates three persons for the office of the supreme court and the  
7           governor appoints one of such persons.

8           Sec. 3. This resolution, if approved by two-thirds of the members  
9           elected (or appointed) and qualified to the House of Representatives, and  
10          two-thirds of the members elected (or appointed) and qualified to the  
11          Senate shall be entered on the journals, together with the yeas and nays.  
12          The secretary of state shall cause this resolution to be published as pro-  
13          vided by law and shall cause the proposed amendment to be submitted  
14          to the electors of the state at the general election in the year 2008 unless  
15          a special election is called at a sooner date by concurrent resolution of  
16          the legislature, in which case it shall be submitted to the electors of the  
17          state at the special election.