

House Concurrent Resolution No. 5031

Representatives Kinzer, Beamer, Brown, Brunk, Carlson, Crum, Donohoe, Faber, Fund, Goico, Grange, Kelley, Kelsey, Landwehr, Mast, Masterson, Merrick, Judy Morrison, Olson, Otto, Peck, Powers, Watkins and B. Wolf

2-8

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.

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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 va-
25 cancy 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. The*
36 *supreme court nominating commission, established as hereinafter*
37 *provided, shall nominate and submit the names of three qualified*
38 *persons to the governor. The governor may appoint one of the nom-*
39 *inated persons or any person possessing the qualifications of office.*

40 (b) In event of the failure of the governor to make the appoint-
41 ment within sixty days from the ~~time the names of the nominees~~
42 ~~are submitted to him~~ *date such vacancy occurred or position be-*
43 *came open*, the chief justice of the supreme court, *with the consent*

1 of the senate, shall make the appointment ~~from such nominees~~ of a
 2 person possessing the qualifications of office.

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

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

41 "Shall _____

42 (Here insert name of justice.)

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(Here insert the title of the court.)

be retained in office?”

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

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

~~(e)~~ (f) The supreme court nominating commission shall be composed as follows: ~~One member, who shall be chairman, chosen from among their number by the members of the bar who are residents of and licensed in Kansas; one member from each congressional district chosen from among their number by the resident members of the bar in each such district, and one member, who is not a lawyer, from each congressional district, appointed by the governor from among the residents of each such district. Three members appointed by the speaker of the house of representatives, three members appointed by the president of the senate and three members appointed by the governor. One such member from each of the three appointing authorities shall be a member of the bar who resides and is licensed in Kansas. The chairperson shall be selected by members of the commission.~~

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

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

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

1 *“Explanatory statement.* The purpose of this amendment is to allow
2 the governor to appoint a qualified person to the office of justice
3 of the supreme court, and such person’s appointment would be
4 required to be consented to by the senate. If the governor fails
5 to act, the chief justice of the supreme court would appoint a
6 qualified person, and such person’s appointment would also be
7 required to be consented to by the senate. The nonpartisan su-
8 preme court nominating commission membership would be
9 changed to include appointments by the speaker of the house of
10 representatives and the president of the senate. The gubernatorial
11 appointments to the commission would be reduced from
12 four members to three members. The members of the bar would
13 no longer elect members of the commission. The commission
14 would continue to nominate three persons for appointment by
15 the governor. However, the governor would make the appoint-
16 ment from all qualified persons, not necessarily from the three
17 nominated by the commission. A procedure is established
18 whereby senate consent would occur with 30 days of receiving
19 the appointment. If the senate does not consent by a majority
20 vote, the governor would then select an appointment which
21 would again go to the senate for consent. The same appointment
22 and consent procedure would be followed until a valid appoint-
23 ment is made. If the senate fails to vote on an appointment within
24 30 days, it will be considered that the senate has consented to
25 the appointment.

26 *“A vote for this proposition would provide a procedure whereby the*
27 governor or chief justice would appoint a person to be a supreme
28 court justice and the senate, by majority vote, would consent to
29 the appointment of supreme court justices. The supreme court
30 nominating commission would continue to nominate three qual-
31 ified persons to the governor. The governor would appoint from
32 all qualified persons.

33 *“A vote against this proposition would continue in effect the current*
34 provision whereby the supreme court nominating commission
35 nominates three persons for the office of the supreme court and
36 the governor appoints one of such persons.

37 Sec. 3. This resolution, if approved by two-thirds of the members
38 elected (or appointed) and qualified to the House of Representatives, and
39 two-thirds of the members elected (or appointed) and qualified to the
40 Senate shall be entered on the journals, together with the yeas and nays.
41 The secretary of state shall cause this resolution to be published as pro-
42 vided by law and shall cause the proposed amendment to be submitted
43 to the electors of the state at the general election in the year 2008 unless

1 a special election is called at a sooner date by concurrent resolution of
2 the legislature, in which case it shall be submitted to the electors of the
3 state at the special election.