

## Senate Concurrent Resolution No. 1612

By Senators Wagle, D. Schmidt, Abrams, Brownlee, Bruce, Colyer, Donovan, Emler, Huelskamp, Kelsey, Lynn, Masterson, Ostmeyer, Petersen, Pilcher-Cook, Pyle and Taddiken

3-5

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.

14  
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 Senate and two-*  
17 *thirds of the members elected (or appointed) and qualified to the House*  
18 *of Representatives 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  
25 court and any position to be open thereon as a result of en-  
26 largement of the court, or the retirement or failure of an in-  
27 cumbent to file ~~his~~ *such justice's* declaration of candidacy to  
28 ~~succeed himself~~ *be retained in office* as hereinafter required,  
29 or failure of a justice to be elected to ~~succeed himself~~ *be re-*  
30 *tained in office*, shall be filled by appointment by the governor,  
31 *with the consent of the senate*, of one of ~~three~~ *six* persons  
32 possessing the qualifications of office who shall be nominated  
33 and whose names shall be submitted to the governor by the  
34 supreme court nominating commission established as herein-  
35 after provided.

36 (b) In event of the failure of the governor to make the appointment  
37 within sixty days from the time the names of the nominees are  
38 submitted to ~~him~~ *the governor*, the chief justice of the supreme  
39 court, *with the consent of the senate*, shall make the appointment  
40 from such nominees.

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

1 of the senate then elected or appointed and qualified, consents to  
 2 such appointment. The senate shall vote to consent to any such  
 3 appointment not later than 30 days after such appointment is  
 4 received by the senate. If the senate is not in session and will not  
 5 be in session within the 30-day time limitation, the president of  
 6 the senate shall convene the senate for the sole purpose of voting  
 7 on such appointment and no other action shall be in order during  
 8 such session. In the event a majority of the senate does not vote  
 9 to consent to the appointment, the governor may appoint another  
 10 of the six persons whose names were submitted to the governor  
 11 pursuant to subsection (a) and such subsequent appointment shall  
 12 be considered by the senate in the same procedure as provided in  
 13 this article. If the governor fails to make such subsequent appoint-  
 14 ment within 15 days after the senate vote on the previous ap-  
 15 pointee or if all six persons whose names were submitted to the  
 16 governor pursuant to subsection (a) have been considered by, but  
 17 did not receive the consent of, the senate, then the chief justice of  
 18 the supreme court shall make the appointment from such  
 19 nominees.

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

36 "Shall \_\_\_\_\_  
 37 (Here insert name of justice.)

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

40 be retained in office?"  
 41 If a majority of those voting on the question vote against retaining him  
 42 such justice in office, the position or office which he such justice  
 43 holds shall be open upon the expiration of his such justice's term

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

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

13 ~~(e)~~ (f) The supreme court nominating commission shall be composed  
 14 as follows: One member, who shall be ~~chairman~~ *chairperson*, cho-  
 15 sen from among their number by the members of the bar who  
 16 are residents of and licensed in Kansas; one member from each  
 17 congressional district chosen from among their number by the  
 18 resident members of the bar in each such district; ~~and~~ one mem-  
 19 ber, who is not a lawyer, from each congressional district, ap-  
 20 pointed by the governor from among the residents of each such  
 21 district; *one member, who is not a lawyer, appointed by the*  
 22 *speaker of the house of representatives; and one member, who is*  
 23 *not a lawyer appointed by the president of the senate.*

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

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

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

35 *“Explanatory statement.* The purpose of this amendment is to re-  
 36 quire persons appointed by the governor or the chief justice to  
 37 the office of justice of the supreme court to be consented to by  
 38 the senate. A procedure is established whereby senate consent  
 39 would occur within 30 days of receiving the appointment. If the  
 40 senate does not consent by a majority vote, the supreme court  
 41 nominating commission would submit six more names to the  
 42 governor. The governor would then select an appointment which  
 43 would again go to the senate for consent. The same nomination,

1        appointment and consent procedure would be followed until a  
2        valid appointment is made. If the senate fails to vote on the  
3        appointment within 30 days, it will be considered that the senate  
4        has consented to the appointment.

5        “A vote for this proposition would provide a procedure whereby the  
6        senate, by majority vote, would consent to the appointment, by  
7        the governor or chief justice, 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 Senate, and two-thirds of the  
14       members elected (or appointed) and qualified to the House of Repre-  
15       sentatives shall be entered on the journals, together with the yeas and  
16       nays. The secretary of state shall cause this resolution to be published as  
17       provided by law and shall cause the proposed amendment to be submitted  
18       to the electors of the state at the general election in November in the  
19       year 2010 unless a special election is called at a sooner date by concurrent  
20       resolution of the legislature, in which case it shall be submitted to the  
21       electors of the state at the special election.