

Senate Concurrent Resolution No. 1616

By Senator Pyle

1-30

1 A PROPOSITION to amend section 5 of article 3 of the constitution of
2 the state of Kansas; relating to the selection of supreme court justices;
3 allowing the governor to appoint supreme court justices, subject to
4 senate confirmation; changing the membership of the supreme court
5 nominating commission.

6
7 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*
8 *members elected (or appointed) and qualified to the Senate and two-*
9 *thirds of the members elected (or appointed) and qualified to the*
10 *House of Representatives concurring therein:*

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

15 "**§ 5. Selection of justices of the supreme court.** (a) Any
16 vacancy occurring in the office of any justice of the supreme court
17 and any position to be open ~~thereon~~ *on the supreme court* as a
18 result of enlargement of the court, or the retirement or failure of an
19 incumbent to file ~~his~~ *such justice's* declaration of candidacy to
20 ~~succeed himself~~ *be retained in office* as hereinafter required, or
21 failure of a justice to be elected to ~~succeed himself~~ *be retained in*
22 *office*, shall be filled by appointment by the governor, *with the*
23 *consent of the senate*, of one of three persons possessing the
24 qualifications of office who shall be nominated and whose names
25 shall be submitted to the governor by the supreme court
26 nominating commission established as hereinafter provided.

27 (b) In event of the failure of the governor to make the
28 appointment within ~~sixty~~ *60* days from the time the names of the
29 nominees are submitted to ~~him~~ *the governor*, the chief justice of the
30 supreme court, *with the consent of the senate*, shall make the
31 appointment from such nominees.

32 (c) *No person appointed pursuant to this section shall assume*
33 *the office of justice of the supreme court until the senate, by an*
34 *affirmative vote of the majority of all members of the senate then*
35 *elected or appointed and qualified, consents to such appointment.*
36 *The senate shall vote to consent to any such appointment not later*

1 *than 60 days after such appointment is received by the senate. If*
 2 *the senate is not in session and will not be in session within the 60-*
 3 *day time limitation, the senate shall vote to consent to any such*
 4 *appointment not later than 20 days after the senate begins its next*
 5 *session. In the event a majority of the senate does not vote to*
 6 *consent to the appointment, the governor, within 60 days after the*
 7 *senate vote on the previous appointee, shall appoint another*
 8 *person possessing the qualifications of office, and such subsequent*
 9 *appointment shall be considered by the senate using the same*
 10 *procedure as provided in this section. The same appointment and*
 11 *consent procedure shall be followed until a valid appointment has*
 12 *been made. No person who has been previously appointed but did*
 13 *not receive the consent of the senate shall be appointed again for*
 14 *the same vacancy. If the senate fails to vote on an appointment*
 15 *within the time limitation imposed by this subsection, the senate*
 16 *shall be deemed to have given consent to such appointment.*

17 (d) (1) Each justice of the supreme court appointed *and*
 18 *consented to pursuant to provisions of subsection (a) of this section*
 19 *shall hold office for an initial term ending on the second Monday*
 20 *in January following the first general election that occurs after the*
 21 *expiration of ~~twelve~~ 12 months in office.*

22 (2) Not less than ~~sixty~~ 60 days prior to the holding of the
 23 general election next preceding the expiration of ~~his~~ *the* term of
 24 office, any justice of the supreme court may file in the office of the
 25 secretary of state a declaration of candidacy for ~~election to succeed~~
 26 ~~himself~~ *retention in office*. If a declaration is not ~~so~~ *filed as*
 27 *provided in this section*, the position held by such justice shall be
 28 open from the expiration of ~~his~~ *such justice's* term of office. If such
 29 declaration is filed, ~~his~~ *such justice's* name shall be submitted at the
 30 next general election to the electors of the state on a separate
 31 judicial ballot, without party designation, reading substantially as
 32 follows:

33 "Shall _____

34 (Here insert name of justice.)

35 _____
 36 (Here insert the title of the court.)

37 be retained in office?"

38 (3) If a majority of those voting on the question vote against
 39 retaining ~~him~~ *the justice* in office, the position ~~or office which he~~
 40 *that the justice* holds shall be open upon the expiration of ~~his~~ *the*
 41 *justice's* term of office. Otherwise ~~he~~ *the justice* shall, unless
 42 removed for cause, remain in office for the regular term of six
 43 years from the second Monday in January following such election.

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

4 ~~(d)~~(e) (1) A ~~nonpartisan~~ nominating commission whose duty
5 it shall be to nominate and submit to the governor the names of
6 persons for appointment to fill vacancies in the office of any justice
7 of the supreme court is hereby established, and shall be known as
8 the "supreme court nominating commission."—~~Said~~ *Such*
9 commission shall be organized as hereinafter provided.

10 ~~(e)~~(2) The supreme court nominating commission shall be
11 composed as follows: One member, who shall be ~~chairman, chosen~~
12 ~~from among their number by the members of the bar who are~~
13 ~~residents of and licensed in Kansas; one member from each~~
14 ~~congressional district chosen from among their number by the~~
15 ~~resident members of the bar in each such district; and one member,~~
16 ~~who is not a lawyer, from each congressional district~~ *chairperson,*
17 *appointed by the governor from among the residents of each such*
18 *district; one member appointed by the chief justice; the lieutenant*
19 *governor; the secretary of state; the attorney general; the*
20 *president of the senate; and the speaker of the house of*
21 *representatives.*

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

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

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

34 "*Explanatory statement.* The purpose of this amendment is to
35 change the procedure for selecting supreme court justices by
36 requiring senate consent and to change the membership of
37 the supreme court nominating commission. The members of
38 the commission would be changed to: One member, who
39 shall be chairperson, appointed by the governor; one
40 member appointed by the chief justice; the lieutenant
41 governor; the secretary of state; the attorney general; the
42 president of the senate; and the speaker of the house of
43 representatives. The gubernatorial appointments to the

1 commission would be reduced from four members to one
2 member. The members of the bar would no longer elect
3 members of the commission. The commission would
4 continue to nominate three persons for appointment by the
5 governor. The governor would appoint one of such persons
6 to the office of justice of the supreme court, and such
7 person's appointment is subject to the consent of the senate.
8 A procedure is established whereby senate consent would
9 occur within 60 days of receiving the appointment. If the
10 senate does not consent by a majority vote, the governor
11 would then select a different appointment that would again
12 go to the senate for consent. The same appointment and
13 consent procedure would be followed until a valid
14 appointment is made. If the senate fails to vote on an
15 appointment within 60 days, it will be considered that the
16 senate has consented to the appointment. Supreme court
17 justices would continue to hold six-year terms and be subject
18 to retention elections.

19 "A vote for this proposition would add a senate confirmation
20 requirement to the current system in which justices of the
21 supreme court are appointed by the governor from a list of
22 three individuals submitted by the supreme court nominating
23 commission. The members of the commission would be
24 changed to: One member, who shall be chairperson,
25 appointed by the governor; one member appointed by the
26 chief justice; the lieutenant governor; the secretary of state;
27 the attorney general; the president of the senate; and the
28 speaker of the house of representatives.

29 "A vote against this proposition would continue in effect the
30 current system in which justices of the supreme court are
31 appointed by the governor from a list of three individuals
32 submitted by the supreme court nominating commission,
33 without senate confirmation. The members of the
34 commission would continue to be: One member, who shall
35 be chairperson, chosen from among their number by the
36 members of the bar who are residents of and licensed in
37 Kansas; one member from each congressional district chosen
38 from among their number by the resident members of the bar
39 in each such district; and one member, who is not a lawyer,
40 from each congressional district, appointed by the governor
41 from among the residents of each such district."

42 Sec. 3. This resolution, if approved by two-thirds of the members
43 elected (or appointed) and qualified to the House of Representatives and

1 two-thirds of the members elected (or appointed) and qualified to the
2 Senate, shall be entered on the journals, together with the yeas and nays.
3 The secretary of state shall cause this resolution to be published as
4 provided by law and shall cause the proposed amendment to be submitted
5 to the electors of the state at a special election which is hereby called on
6 March 19, 2024, pursuant to section 1 of article 14 of the constitution of
7 the state of Kansas, to be held in conjunction with the primary election
8 held on such date.