Session of 2006

Senate Concurrent Resolution No. 1622

By Senators Barnett and Wagle

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9 A PROPOSITION to amend section 5 of article 3 of the constitution of 10 the state of Kansas, relating to the selection of justices of the supreme 11 court. 1213 Be it resolved by the Legislature of the State of Kansas, two-thirds of the members elected (or appointed) and qualified to the Senate and two-1415thirds of the members elected (or appointed) and qualified to the House 16of Representatives concurring therein: 17Section 1. The following proposition to amend the constitution of the state of Kansas shall be submitted to the qualified electors of the state 18for their approval or rejection: Section 5 of article 3 of the constitution 1920of the state of Kansas is hereby amended to read as follows: 21"§ 5. Selection of justices of the supreme court. (a) Any va-22 cancy occurring in the office of any justice of the supreme court 23 and any position to be open thereon as a result of enlargement 24 of the court, or the retirement or failure of an incumbent to file 25his such justice's declaration of candidacy to succeed himself be 26 retained in office as hereinafter required, or failure of a justice 27 to be elected to succeed himself be retained in office, shall be 28filled by appointment by the governor of one of three persons 29 possessing the qualifications of office who shall be nominated 30 and whose names shall be submitted to the governor by the supreme court nominating commission established as hereinafter 3132 provided, with the consent of the senate. 33 In event of the failure of the governor to make the appoint-34 ment within sixty 60 days from the time the names of the nom-35 inces are submitted to him vacancy occurs or the position opens, 36 the chief justice of the supreme court, with the consent of the 37 senate, shall make the appointment from such nominces. 38 No person appointed pursuant to subsection (a) or (b) of this (c)39 section shall assume the office of justice of the supreme court 40 until the senate, by an affirmative vote of the majority of all 41members of the senate then elected or appointed and qualified, 42consents to such appointment. The senate shall vote to consent 43 to any such appointment not later than 30 days after such apSCR 1622

1 pointment is received by the senate. If the senate is not in session 2 and will not be in session within the 30 day time limitation, the 3 president of the senate shall convene the senate for the sole purpose of voting on such appointment and no other action shall be 4 $\mathbf{5}$ in order during such session. In the event a majority of the senate 6 does not vote to consent to the appointment, the governor, within 7 30 days after the senate vote on the previous appointee, shall appoint another person possessing the qualifications of office and 8 9 such subsequent appointment shall be considered by the senate 10 in the same procedure as provided in this article. If the governor fails to make such subsequent appointment within 15 days after 11 12 the senate vote on the previous appointee, then the chief justice 13 of the supreme court shall make the appointment, with the consent of the senate in the same procedure as provided in this ar-1415 ticle. The same nomination, appointment and consent procedure shall be followed until a valid appointment has been made. No 1617person who has been previously appointed but did not receive 18the consent of the senate shall be nominated or appointed again for the same vacancy. If the senate fails to vote on an appointment 1920within the 30 day time limitation, the senate shall be deemed to 21have given consent to such appointment. (e) (d) Each justice of the supreme court appointed pursuant to 2223 provisions of subsection (a) or (b) of this section and consented 24 to pursuant to the provisions of subsection (c) of this section shall 25hold office for an initial term ending on the second Monday in 26January following the first general election that occurs after the 27 expiration of twelve 12 months in office. Not less than sixty 60 28days prior to the holding of the general election next preceding 29 the expiration of his such justice's term of office, any justice of 30 the supreme court may file in the office of the secretary of state 31 a declaration of candidacy for election to succeed himself be 32 retained in office. If a declaration is not so filed, the position held 33 by such justice shall be open from the expiration of his such 34 justice's term of office. If such declaration is filed, his such jus-35 *tice's* name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party 36 37 designation, reading substantially as follows: 38 "Shall 39 (Here insert name of justice.) 40 (Here insert the title of the court.) 41be retained in office?' 42

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If a majority of those voting on the question vote against retaining

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1 him such justice in office, the position or office which he such 2 justice holds shall be open upon the expiration of his such jus-3 tice's term of office; otherwise he such justice shall, unless re-4 moved for cause, remain in office for the regular term of six years $\mathbf{5}$ from the second Monday in January following such election. At 6 the expiration of each term he shall such justice, unless by law 7 he is compelled to retire by law, shall be eligible for retention 8 in office by election in the manner prescribed in this section. 9 (d) A nonpartisan nominating commission whose duty it shall be 10 to nominate and submit to the governor the names of persons for appointment to fill vacancies in the office of any justice of 11 the supreme court is hereby established, and shall be known as 12 13 the "supreme court nominating commission." Said commission shall be organized as hereinafter provided. 1415 -The supreme court nominating commission shall be composed as follows: One member, who shall be chairman, chosen from 1617among their number by the members of the bar who are resi-18dents of and licensed in Kansas; one member from each con-19gressional district chosen from among their number by the res-20ident members of the bar in each such district; and one member, 21who is not a lawyer, from each congressional district, appointed 22 by the governor from among the residents of each such district. 23 (f) The terms of office, the procedure for selection and certifica-24 tion of the members of the commission and provision for their 25compensation or expenses shall be as provided by the legislature. 26No member of the supreme court nominating commission 27 shall, while he is a member, hold any other public office by ap-28pointment or any official position in a political party or for six months thereafter be eligible for nomination for the office of 29 justice of the supreme court. The commission may act only by 30 31 the 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 abol-35 ish the supreme court nominating commission and to require 36 persons appointed by the governor or the chief justice to the 37 office of justice of the supreme court to be consented to by the 38 senate, similar to the federal system. A procedure is established 39 whereby senate consent would occur with 30 days of receiving 40 the appointment. If the senate does not consent by a majority vote, the governor or the chief justice would then select another 41appointment which would again be submitted to the senate for 42consent. The same nomination, appointment and consent pro-43

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cedure would be followed until a valid appointment is made. If 1 2 the senate fails to vote on an appointment within 30 days, it will 3 be deemed that the senate has consented to the appointment. "A vote for this proposition would abolish the supreme court nom-4 $\mathbf{5}$ inating commission and provide a procedure whereby the senate, 6 by majority vote, must consent to the appointment, by the gov-7 ernor 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 any justice of the supreme court and the governor appoints one of such persons." 11 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 members elected (or appointed) and qualified to the House of Repre-1415sentatives shall be entered on the journals, together with the yeas and nays. The secretary of state shall cause this resolution to be published as 16 17provided by law and shall cause the proposed amendment to be submitted 18to the electors of the state at the general election in November in the 19year 2006.

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