House Concurrent Resolution No. 5008

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

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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

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

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

- "§ 5. Selection of justices of the supreme court. (a) Any vacancy occurring in the office of any justice of the supreme court and any position to be open thereon as a result of enlargement of the court, or the retirement or failure of an incumbent to file his such justice's declaration of candidacy to succeed himself be retained in office as hereinafter required, or failure of a justice to be elected to succeed himself be retained in office, shall be filled by appointment by the governor of one of three persons possessing the qualifications of office who shall be nominated and whose names shall be submitted to the governor by the supreme court nominating commission established as hereinafter provided, with the consent of the senate, of a person possessing the qualifications of office.
- (b) In event of the failure of the governor to make the appointment within sixty days from the time the names of the nominees are submitted to him date such vacancy occurred or position became open, the chief justice of the supreme court, with the consent of the senate, shall make the appointment from such nominees of a person possessing the qualifications of office.
- (c) No person appointed pursuant to subsection (a) or (b) of this section shall assume the office of justice of the supreme court until the senate, by an affirmative vote of the majority of all members of the

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senate then elected or appointed and qualified, consents to such appointment. The senate shall vote to consent to any such appointment not later than 30 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 30day time limitation, the president of the senate shall convene the senate for the sole purpose of voting on such appointment and no other action shall be in order during such session. In the event a majority of the senate does not vote to consent to the appointment, the governor, within 30 days after the senate vote on the previous appointee, shall appoint another person possessing the qualifications of office and such subsequent appointment shall be considered by the senate in the same procedure as provided in this article. The same appointment and consent procedure shall be followed until a valid appointment has been made. No person who has been previously appointed but did not receive the consent of the senate shall be appointed again for the same vacancy. If the senate fails to vote on an appointment within the 30day time limitation, the senate shall be deemed to have given consent to such appointment.

 $\stackrel{\text{(e)}}{\text{(d)}}$ Each justice of the supreme court appointed pursuant to provisions of subsection (a) or (b) of this section and consented to pursuant to the provisions of subsection (c) of this section shall hold office for an initial term ending on the second Monday in January following the first general election that occurs after the expiration of twelve months in office. Not less than sixty days prior to the holding of the general election next preceding the expiration of his such justice's term of office, any justice of the supreme court may file in the office of the secretary of state a declaration of candidacy for election to succeed himself be retained in office. If a declaration is not so filed, the position held by such justice shall be open from the expiration of his such justice's term of office. If such declaration is filed, his such justice's name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

"Shall _

(Here insert name of justice.)

. 1.

(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) 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) 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.
- (f) 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) 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:

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

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

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

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

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