

By Senator Cowin

11-30-02

1 Senate Joint Resolution No. ____
2 A joint resolution proposing amendments to
3 Sections 3, 8, 10, and 11 of Article V of the
4 State Constitution and the creation of Section
5 26 of Article XII of the State Constitution to
6 provide a method for selection, and for terms
7 of office, of Supreme Court justices and
8 district court of appeal judges and to require
9 judicial nominating commission proceedings to
10 be public.

12 Be It Resolved by the Legislature of the State of Florida:

14 That the following amendments to Sections 3, 8, 10, and
15 11 of Article V of the State Constitution and the creation of
16 Section 26 of Article XII of the State Constitution are agreed
17 to and shall be submitted to the electors of this state for
18 approval or rejection at the next general election or at an
19 earlier special election specifically authorized by law for
20 that purpose:

21 ARTICLE V
22 JUDICIARY

23 SECTION 3. Supreme court.--

24 (a) ORGANIZATION.--The supreme court shall consist of
25 seven justices. Of the seven justices, each appellate
26 district shall have at least one justice ~~elected or appointed~~
27 from the district on ~~to~~ the supreme court who is a resident of
28 the district at the time of the original appointment ~~or~~
29 ~~election~~. Five justices shall constitute a quorum. The
30 concurrence of four justices shall be necessary to a decision.
31 When recusals for cause would prohibit the court from

1 convening because of the requirements of this section, judges
2 assigned to temporary duty may be substituted for justices.

3 (b) JURISDICTION.--The supreme court:

4 (1) Shall hear appeals from final judgments of trial
5 courts imposing the death penalty and from decisions of
6 district courts of appeal declaring invalid a state statute or
7 a provision of the state constitution.

8 (2) When provided by general law, shall hear appeals
9 from final judgments entered in proceedings for the validation
10 of bonds or certificates of indebtedness and shall review
11 action of statewide agencies relating to rates or service of
12 utilities providing electric, gas, or telephone service.

13 (3) May review any decision of a district court of
14 appeal that expressly declares valid a state statute, or that
15 expressly construes a provision of the state or federal
16 constitution, or that expressly affects a class of
17 constitutional or state officers, or that expressly and
18 directly conflicts with a decision of another district court
19 of appeal or of the supreme court on the same question of law.

20 (4) May review any decision of a district court of
21 appeal that passes upon a question certified by it to be of
22 great public importance, or that is certified by it to be in
23 direct conflict with a decision of another district court of
24 appeal.

25 (5) May review any order or judgment of a trial court
26 certified by the district court of appeal in which an appeal
27 is pending to be of great public importance, or to have a
28 great effect on the proper administration of justice
29 throughout the state, and certified to require immediate
30 resolution by the supreme court.

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1 (6) May review a question of law certified by the
2 Supreme Court of the United States or a United States Court of
3 Appeals which is determinative of the cause and for which
4 there is no controlling precedent of the supreme court of
5 Florida.

6 (7) May issue writs of prohibition to courts and all
7 writs necessary to the complete exercise of its jurisdiction.

8 (8) May issue writs of mandamus and quo warranto to
9 state officers and state agencies.

10 (9) May, or any justice may, issue writs of habeas
11 corpus returnable before the supreme court or any justice, a
12 district court of appeal or any judge thereof, or any circuit
13 judge.

14 (10) Shall, when requested by the attorney general
15 pursuant to the provisions of Section 10 of Article IV, render
16 an advisory opinion of the justices, addressing issues as
17 provided by general law.

18 (c) CLERK AND MARSHAL.--The supreme court shall
19 appoint a clerk and a marshal who shall hold office during the
20 pleasure of the court and perform such duties as the court
21 directs. Their compensation shall be fixed by general law.
22 The marshal shall have the power to execute the process of the
23 court throughout the state, and in any county may deputize the
24 sheriff or a deputy sheriff for such purpose.

25 SECTION 8. Eligibility.--No person shall be eligible
26 for office of justice or judge of any court unless the person
27 is an elector of the state and resides in the territorial
28 jurisdiction of the court. ~~No justice or judge shall serve~~
29 ~~after attaining the age of seventy years except upon temporary~~
30 ~~assignment or to complete a term, one-half of which has been~~
31 ~~served.~~ No person is eligible for the office of justice of

1 the supreme court or judge of a district court of appeal
2 unless the person is, and has been for the preceding ten
3 years, a member of the bar of Florida. No person is eligible
4 for the office of circuit judge unless the person is, and has
5 been for the preceding five years, a member of the bar of
6 Florida. Unless otherwise provided by general law, no person
7 is eligible for the office of county court judge unless the
8 person is, and has been for the preceding five years, a member
9 of the bar of Florida. Unless otherwise provided by general
10 law, a person shall be eligible for election or appointment to
11 the office of county court judge in a county having a
12 population of 40,000 or less if the person is a member in good
13 standing of the bar of Florida.

14 SECTION 10. Retention; election and terms.--

15 (a) Any ~~justice or~~ judge may qualify for retention by
16 a vote of the electors in the general election next preceding
17 the expiration of the ~~justice's or~~ judge's term in the manner
18 prescribed by law. If a ~~justice or~~ judge is ineligible or
19 fails to qualify for retention, a vacancy shall exist in that
20 office upon the expiration of the term being served by the
21 ~~justice or~~ judge. When a ~~justice or~~ judge so qualifies, the
22 ballot shall read substantially as follows: "Shall ~~Justice (or~~
23 ~~Judge)~~...(name of ~~justice or~~ judge)... of the ...(name of the
24 court)... be retained in office?" If a majority of the
25 qualified electors voting within the territorial jurisdiction
26 of the court vote to retain, the ~~justice or~~ judge shall be
27 retained for a term of six years. The term of the ~~justice or~~
28 judge retained shall commence on the first Tuesday after the
29 first Monday in January following the general election. If a
30 majority of the qualified electors voting within the
31 territorial jurisdiction of the court vote to not retain, a

1 vacancy shall exist in that office upon the expiration of the
2 term being served by the ~~justice or~~ judge.

3 (b)

4 (1) The election of circuit judges shall be preserved
5 notwithstanding the provisions of subsection (a) unless a
6 majority of those voting in the jurisdiction of that circuit
7 approves a local option to select circuit judges by merit
8 selection and retention rather than by election. The election
9 of circuit judges shall be by a vote of the qualified electors
10 within the territorial jurisdiction of the court.

11 (2) The election of county court judges shall be
12 preserved notwithstanding the provisions of subsection (a)
13 unless a majority of those voting in the jurisdiction of that
14 county approves a local option to select county judges by
15 merit selection and retention rather than by election. The
16 election of county court judges shall be by a vote of the
17 qualified electors within the territorial jurisdiction of the
18 court.

19 (3)

20 a. A vote to exercise a local option to select circuit
21 court judges and county court judges by merit selection and
22 retention rather than by election shall be held in each
23 circuit and county at the general election in the year 2000.
24 If a vote to exercise this local option fails in a vote of the
25 electors, such option shall not again be put to a vote of the
26 electors of that jurisdiction until the expiration of at least
27 two years.

28 b. After the year 2000, a circuit may initiate the
29 local option for merit selection and retention or the election
30 of circuit judges, whichever is applicable, by filing with the
31 secretary of state a petition signed by the number of electors

1 equal to at least ten percent of the votes cast in the circuit
2 in the last preceding election in which presidential electors
3 were chosen.

4 c. After the year 2000, a county may initiate the
5 local option for merit selection and retention or the election
6 of county court judges, whichever is applicable, by filing
7 with the supervisor of elections a petition signed by the
8 number of electors equal to at least ten percent of the votes
9 cast in the county in the last preceding election in which
10 presidential electors were chosen. The terms of circuit judges
11 and judges of county courts shall be for six years.

12 SECTION 11. Vacancies.--

13 (a) Whenever a vacancy occurs in a judicial office to
14 which election for retention applies, the governor shall fill
15 the vacancy by appointing for a term ending on the first
16 Tuesday after the first Monday in January of the year
17 following the next general election occurring at least one
18 year after the date of appointment, one of not fewer than
19 three persons nor more than six persons nominated by the
20 appropriate judicial nominating commission.

21 (b) The governor shall fill each vacancy on a circuit
22 court or on a county court, wherein the judges are elected by
23 a majority vote of the electors, by appointing for a term
24 ending on the first Tuesday after the first Monday in January
25 of the year following the next primary and general election
26 occurring at least one year after the date of appointment, one
27 of not fewer than three persons nor more than six persons
28 nominated by the appropriate judicial nominating commission.
29 An election shall be held to fill that judicial office for the
30 term of the office beginning at the end of the appointed term.

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1 (c) The nominations shall be made within thirty days
2 from the occurrence of a vacancy unless the period is extended
3 by the governor for a time not to exceed thirty days. The
4 governor shall make the appointment within sixty days after
5 the nominations have been certified to the governor.

6 (d) There shall be a separate judicial nominating
7 commission as provided by general law for ~~the supreme court,~~
8 ~~each district court of appeal,~~ and each judicial circuit for
9 all trial courts within the circuit. Uniform rules of
10 procedure shall be established by the judicial nominating
11 commissions ~~at each level of the court system.~~ Such rules, or
12 any part thereof, may be repealed by general law enacted by a
13 majority vote of the membership of each house of the
14 legislature, or by the supreme court, five justices
15 concurring. ~~Except for deliberations of the judicial~~
16 ~~nominating commissions,~~The proceedings of the commissions and
17 their records shall be open to the public.

18 (e) Whenever a vacancy occurs in the office of justice
19 of the supreme court or judge of a district court of appeal,
20 or whenever a vacancy will occur due to the expiration of the
21 term of office of an incumbent justice or judge, the governor
22 shall fill the vacancy by appointment. The appointee must be
23 confirmed by the senate no later than during the next regular
24 session of the legislature. The term of office of a justice of
25 the supreme court or judge of a district court of appeal is
26 six years, except that if the vacancy occurs before the
27 expiration of the term of office of the incumbent justice or
28 judge, the appointment shall be for the unexpired portion of
29 the term. A justice or judge may be reappointed for two full
30 terms, but a person may not serve as a justice of the supreme

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1 court or judge of a district court of appeal for more than
2 eighteen years consecutively.

3 ARTICLE XII

4 SCHEDULE

5 SECTION 26. Schedule to Article V amendment.--The
6 amendment of Sections 3, 8, 10, and 11 of Article V by this
7 joint resolution, if approved, shall take effect on the first
8 Tuesday after the first Monday in January 2003. However, each
9 person serving as a justice of the supreme court or judge of a
10 district court of appeal on the day such amendment is approved
11 may continue in that office until the expiration of the term.
12 The limitation on years of service expressed in Article V,
13 Section 11(e) does not apply with respect to any such person
14 until the expiration of the term the person is serving on the
15 day the amendment is approved.

16 BE IT FURTHER RESOLVED that the following statement be
17 placed on the ballot:

18 CONSTITUTIONAL AMENDMENT

19 ARTICLE V, SECTIONS 3, 8, 10, 11; ARTICLE XII, SECTION 26
20 APPOINTMENT, CONFIRMATION, TERMS OF SUPREME COURT
21 JUSTICES, COURT OF APPEAL JUDGES; JUDICIAL NOMINATING
22 COMMISSION PROCEEDINGS.--Proposing an amendment to the State
23 Constitution to make proceedings of judicial nominating
24 commissions public and to abolish retention elections for the
25 offices of Supreme Court Justice and district court of appeal
26 judge, making the offices appointive by the Governor, subject
27 to Senate confirmation, with no one eligible to serve more
28 than 18 consecutive years.