

By Representative Brummer

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House Joint Resolution

A joint resolution proposing amendments to Sections 3, 8, 10, 11, and 12 of Article V of the State Constitution and the creation of Section 26 of Article XII of the State Constitution to provide a method for selection, and for terms of office, of Supreme Court justices, district courts of appeal judges, and county court judges, to require judicial nominating commission proceedings to be public, and to propose an amendment relating to the Judicial Qualifications Commission.

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

That the following amendments to Sections 3, 8, 10, 11, and 12 of Article V of the State Constitution and the creation of Section 26 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V
JUDICIARY

SECTION 3. Supreme court.--

(a) ORGANIZATION.--The supreme court shall consist of seven justices. Of the seven justices, each appellate district shall have at least one justice ~~elected or appointed~~ from the district on ~~to~~ the supreme court who is a resident of the district at the time of the original appointment ~~or~~ election. Five justices shall constitute a quorum. The

1 concurrence of four justices shall be necessary to a decision.
2 When recusals for cause would prohibit the court from
3 convening because of the requirements of this section, judges
4 assigned to temporary duty may be substituted for justices.

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

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

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

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

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

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

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

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

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

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

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

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

27 SECTION 8. Eligibility.--No person shall be eligible
28 for office of justice or judge of any court unless the person
29 is an elector of the state and resides in the territorial
30 jurisdiction of the court. ~~No justice or judge shall serve~~
31 ~~after attaining the age of seventy years except upon temporary~~

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

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

17 (a) Any ~~justice or~~ judge of a district court of appeal
18 may qualify for retention by a vote of the electors in the
19 general election next preceding the expiration of the
20 ~~justice's or~~ judge's term in the manner prescribed by law. If
21 a ~~justice or~~ judge of a district court of appeal is ineligible
22 or fails to qualify for retention, a vacancy shall exist in
23 that office upon the expiration of the term being served by
24 the ~~justice or~~ judge. When a ~~justice or~~ judge so qualifies,
25 the ballot shall read substantially as follows: "Shall ~~Justice~~
26 ~~(or Judge)~~...(name of ~~justice or~~ judge)... of the ...(name of
27 the court)... be retained in office?" If a majority of the
28 qualified electors voting on the question of retention within
29 the territorial jurisdiction of the court vote to retain, the
30 ~~justice or~~ judge shall be retained for a term of six years.
31 The term of the ~~justice or~~ judge retained shall commence on

1 the first Tuesday after the first Monday in January following
2 the general election. If a majority of the qualified electors
3 voting on the question of retention within the territorial
4 jurisdiction of the court vote to not retain, a vacancy shall
5 exist in that office upon the expiration of the term being
6 served by the ~~justice or judge~~.

7 (b)

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

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

23 (3)

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

1 ~~b. After the year 2000, a circuit may initiate the~~
2 ~~local option for merit selection and retention or the election~~
3 ~~of circuit judges, whichever is applicable, by filing with the~~
4 ~~secretary of state a petition signed by the number of electors~~
5 ~~equal to at least ten percent of the votes cast in the circuit~~
6 ~~in the last preceding election in which presidential electors~~
7 ~~were chosen.~~

8 ~~c. After the year 2000, a county may initiate the~~
9 ~~local option for merit selection and retention or the election~~
10 ~~of county court judges, whichever is applicable, by filing~~
11 ~~with the supervisor of elections a petition signed by the~~
12 ~~number of electors equal to at least ten percent of the votes~~
13 ~~cast in the county in the last preceding election in which~~
14 ~~presidential electors were chosen.~~

15 (2) The terms of circuit judges and judges of county
16 courts shall be for six years.

17 SECTION 11. Vacancies.--

18 (a) Whenever a vacancy occurs in a judicial office to
19 which election for retention applies, the governor shall fill
20 the vacancy by appointing, by and with the advice and consent
21 of the senate, for a term ending on the first Tuesday after
22 the first Monday in January of the year following the next
23 general election occurring at least one year after the date of
24 appointment, one of not fewer than three persons nor more than
25 six persons nominated by the appropriate judicial nominating
26 commission.

27 (b) The governor shall fill each vacancy on a circuit
28 court or on a county court, ~~wherein the judges are elected by~~
29 ~~a majority vote of the electors,~~ by appointing, by and with
30 the advice and consent of the senate, for a term ending on the
31 first Tuesday after the first Monday in January of the year

1 following the next primary and general election occurring at
2 least one year after the date of appointment, one of not fewer
3 than three persons nor more than six persons nominated by the
4 appropriate judicial nominating commission. An election shall
5 be held to fill that judicial office for the term of the
6 office beginning at the end of the appointed term.

7 (c) Each commission shall nominate at least three but
8 no less than one-third of the eligible applicants for any
9 judicial vacancy. Whenever a vacancy occurs as the result of
10 the expiration of the term of office of an incumbent justice
11 of the supreme court or judge of a district court of appeal,
12 the commission shall include the name of the incumbent in its
13 nominations, provided the incumbent is constitutionally
14 eligible for nomination and has not otherwise submitted a
15 written statement to the commission requesting not to be
16 considered for nomination.The nominations shall be made
17 within thirty days from the occurrence of a vacancy unless the
18 period is extended by the governor for a time not to exceed
19 thirty days. A report containing any information required by
20 the rules of procedure or general law, in addition to any
21 other information that the commission deems useful to the
22 governor in filling the judicial vacancy shall accompany the
23 certified nominations.The governor shall make the appointment
24 within sixty days after the nominations have been certified to
25 the governor. The appointment shall be transmitted to the
26 senate with the governor's signature. If the senate is not in
27 session at the time the governor transmits the appointment,
28 the senate may call itself into session, by proclamation of
29 the senate president or as otherwise provided by its rules, to
30 consider the nomination. If the senate is not in session
31 during the thirty-day period following the governor's

1 transmission of an appointment, and the senate does not
2 convene within such thirty-day period, the appointment shall
3 be deemed confirmed. If the senate is in session at any time
4 during such thirty days and does not confirm such appointment
5 by majority vote of senators voting on the question within
6 such thirty days, the appointment shall be rejected, unless
7 the rules of the senate in effect immediately prior to the
8 appointment provide for confirmation in such circumstances. A
9 person appointed to judicial office and rejected by the senate
10 shall not be eligible for nomination to any judicial office
11 until the next following general election.

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

25 (e) Whenever a vacancy occurs in the office of justice
26 of the supreme court or judge of a district court of appeal,
27 including a vacancy occurring due to the expiration of the
28 term of office of an incumbent justice of the supreme court or
29 judge of a district court of appeal, the governor shall fill
30 the vacancy by appointment. The appointee must be confirmed by
31 the senate in accordance with this section. The term of office

1 of a justice of the supreme court or a judge of a district
2 court of appeal is six years. However, if a vacancy occurs
3 before the expiration of the term of office of an incumbent
4 justice or judge, the appointment shall be for the unexpired
5 portion of that term. A justice may be reappointed for two
6 full terms, but a person may not serve as a justice for more
7 than eighteen years consecutively.

8 SECTION 12. Discipline; removal and retirement.--

9 (a) JUDICIAL QUALIFICATIONS COMMISSION.--A judicial
10 qualifications commission is created.

11 (1) There shall be a judicial qualifications
12 commission vested with jurisdiction to investigate and
13 recommend to the Supreme Court of Florida the removal from
14 office of any justice or judge whose conduct, during term of
15 office or otherwise occurring on or after November 1, 1966,
16 (without regard to the effective date of this section)
17 demonstrates a present unfitness to hold office, and to
18 investigate and recommend the discipline of a justice or judge
19 whose conduct, during term of office or otherwise occurring on
20 or after November 1, 1966 (without regard to the effective
21 date of this section), warrants such discipline. For purposes
22 of this section, discipline is defined as any or all of the
23 following: reprimand, fine, suspension with or without pay, or
24 lawyer discipline. The commission shall have jurisdiction over
25 justices and judges regarding allegations that misconduct
26 occurred before or during service as a justice or judge if a
27 complaint is made no later than one year following service as
28 a justice or judge. The commission shall have jurisdiction
29 regarding allegations of incapacity during service as a
30 justice or judge. The commission shall be composed of:

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1 a. Two judges of district courts of appeal selected by
2 the judges of those courts, two circuit judges selected by the
3 judges of the circuit courts and two judges of county courts
4 selected by the judges of those courts;

5 b. Four electors who reside in the state, who are
6 members of the bar of Florida, and who shall be appointed by
7 the governor ~~chosen by the governing body of the bar of~~
8 ~~Florida~~; and

9 c. Five electors who reside in the state, who have
10 never held judicial office or been members of the bar of
11 Florida, and who shall be appointed by the governor.

12 (2) The members of the judicial qualifications
13 commission shall serve staggered terms, not to exceed six
14 years, as prescribed by general law. No member of the
15 commission except a judge shall be eligible for state judicial
16 office while acting as a member of the commission and for a
17 period of two years thereafter. No member of the commission
18 shall hold office in a political party or participate in any
19 campaign for judicial office or hold public office; provided
20 that a judge may campaign for judicial office and hold that
21 office. The commission shall elect one of its members as its
22 chairperson.

23 (3) Members of the judicial qualifications commission
24 not subject to impeachment shall be subject to removal from
25 the commission pursuant to the provisions of Article IV,
26 Section 7, Florida Constitution.

27 (4) The commission shall adopt rules regulating its
28 proceedings, the filling of vacancies by the appointing
29 authorities, the disqualification of members, the rotation of
30 members between the panels, and the temporary replacement of
31 disqualified or incapacitated members. The commission's

1 rules, or any part thereof, may be repealed by general law
2 enacted by a majority vote of the membership of each house of
3 the legislature, or by the supreme court, five justices
4 concurring. The commission shall have power to issue
5 subpoenas. Until formal charges against a justice or judge are
6 filed by the investigative panel with the clerk of the supreme
7 court of Florida all proceedings by or before the commission
8 shall be confidential; provided, however, upon a finding of
9 probable cause and the filing by the investigative panel with
10 said clerk of such formal charges against a justice or judge
11 such charges and all further proceedings before the commission
12 shall be public.

13 (5) The commission shall have access to all
14 information from all executive, legislative and judicial
15 agencies, including grand juries, subject to the rules of the
16 commission. At any time, on request of the speaker of the
17 house of representatives or the governor, the commission shall
18 make available all information in the possession of the
19 commission for use in consideration of impeachment or
20 suspension, respectively.

21 (b) PANELS.--The commission shall be divided into an
22 investigative panel and a hearing panel as established by rule
23 of the commission. The investigative panel is vested with the
24 jurisdiction to receive or initiate complaints, conduct
25 investigations, dismiss complaints, and upon a vote of a
26 simple majority of the panel submit formal charges to the
27 hearing panel. The hearing panel is vested with the authority
28 to receive and hear formal charges from the investigative
29 panel and upon a two-thirds vote of the panel recommend to the
30 supreme court the removal of a justice or judge or the
31 involuntary retirement of a justice or judge for any permanent

1 disability that seriously interferes with the performance of
2 judicial duties. Upon a simple majority vote of the membership
3 of the hearing panel, the panel may recommend to the supreme
4 court that the justice or judge be subject to appropriate
5 discipline.

6 (c) SUPREME COURT.--The supreme court shall receive
7 recommendations from the judicial qualifications commission's
8 hearing panel.

9 (1) The supreme court may accept, reject, or modify in
10 whole or in part the findings, conclusions, and
11 recommendations of the commission and it may order that the
12 justice or judge be subjected to appropriate discipline, or be
13 removed from office with termination of compensation for
14 willful or persistent failure to perform judicial duties or
15 for other conduct unbecoming a member of the judiciary
16 demonstrating a present unfitness to hold office, or be
17 involuntarily retired for any permanent disability that
18 seriously interferes with the performance of judicial duties.
19 Malafides, scienter or moral turpitude on the part of a
20 justice or judge shall not be required for removal from office
21 of a justice or judge whose conduct demonstrates a present
22 unfitness to hold office. After the filing of a formal
23 proceeding and upon request of the investigative panel, the
24 supreme court may suspend the justice or judge from office,
25 with or without compensation, pending final determination of
26 the inquiry.

27 (2) The supreme court may award costs to the
28 prevailing party.

29 (d) The power of removal conferred by this section
30 shall be both alternative and cumulative to the power of
31 impeachment.

1 (e) Notwithstanding any of the foregoing provisions of
2 this section, if the person who is the subject of proceedings
3 by the judicial qualifications commission is a justice of the
4 supreme court of Florida all justices of such court
5 automatically shall be disqualified to sit as justices of such
6 court with respect to all proceedings therein concerning such
7 person and the supreme court for such purposes shall be
8 composed of a panel consisting of the seven chief judges of
9 the judicial circuits of the state of Florida most senior in
10 tenure of judicial office as circuit judge. For purposes of
11 determining seniority of such circuit judges in the event
12 there be judges of equal tenure in judicial office as circuit
13 judge the judge or judges from the lower numbered circuit or
14 circuits shall be deemed senior. In the event any such chief
15 circuit judge is under investigation by the judicial
16 qualifications commission or is otherwise disqualified or
17 unable to serve on the panel, the next most senior chief
18 circuit judge or judges shall serve in place of such
19 disqualified or disabled chief circuit judge.

20 (f) SCHEDULE TO SECTION 12.--

21 (1) Except to the extent inconsistent with the
22 provisions of this section, all provisions of law and rules of
23 court in force on the effective date of this article shall
24 continue in effect until superseded in the manner authorized
25 by the constitution.

26 (2) After this section becomes effective and until
27 adopted by rule of the commission consistent with it:

28 a. The commission shall be divided, as determined by
29 the chairperson, into one investigative panel and one hearing
30 panel to meet the responsibilities set forth in this section.

31 b. The investigative panel shall be composed of:

- 1 1. Four judges,
2 2. Two members of the bar of Florida, and
3 3. Three non-lawyers.
4 c. The hearing panel shall be composed of:
5 1. Two judges,
6 2. Two members of the bar of Florida, and
7 3. Two non-lawyers.
8 d. Membership on the panels may rotate in a manner
9 determined by the rules of the commission provided that no
10 member shall vote as a member of the investigative and hearing
11 panel on the same proceeding.
12 e. The commission shall hire separate staff for each
13 panel.
14 f. The members of the commission shall serve for
15 staggered terms of six years.
16 g. The terms of office of the present members of the
17 judicial qualifications commission shall expire upon the
18 effective date of the amendments to this section approved by
19 the legislature during the regular session of the legislature
20 in 1996 and new members shall be appointed to serve the
21 following staggered terms:
22 1. Group I.--The terms of five members, composed of
23 two electors as set forth in s. 12(a)(1)c. of Article V, one
24 member of the bar of Florida as set forth in s. 12(a)(1)b. of
25 Article V, one judge from the district courts of appeal and
26 one circuit judge as set forth in s. 12(a)(1)a. of Article V,
27 shall expire on December 31, 1998.
28 2. Group II.--The terms of five members, composed of
29 one elector as set forth in s. 12(a)(1)c. of Article V, two
30 members of the bar of Florida as set forth in s. 12(a)(1)b. of
31 Article V, one circuit judge and one county judge as set forth

1 in s. 12(a)(1)a. of Article V shall expire on December 31,
2 2000.

3 3. Group III.--The terms of five members, composed of
4 two electors as set forth in s. 12(a)(1)c. of Article V, one
5 member of the bar of Florida as set forth in s. 12(a)(1)b.,
6 one judge from the district courts of appeal and one county
7 judge as set forth in s. 12(a)(1)a. of Article V, shall expire
8 on December 31, 2002.

9 h. An appointment to fill a vacancy of the commission
10 shall be for the remainder of the term.

11 i. Selection of members by district courts of appeal
12 judges, circuit judges, and county court judges, shall be by
13 no less than a majority of the members voting at the
14 respective courts' conferences. ~~Selection of members by the~~
15 ~~board of governors of the bar of Florida shall be by no less~~
16 ~~than a majority of the board.~~

17 j. The commission shall be entitled to recover the
18 costs of investigation and prosecution, in addition to any
19 penalty levied by the supreme court.

20 k. The compensation of members and referees shall be
21 the travel expenses or transportation and per diem allowance
22 as provided by general law.

23 ARTICLE XII

24 SCHEDULE

25 SECTION 26. Schedule to Article V amendment.--The
26 amendment of Sections 3, 8, 10, 11, and 12 of Article V by
27 this joint resolution, if approved, shall take effect on the
28 first Tuesday after the first Monday in January 2003. However,
29 each person serving as a justice of the supreme court or judge
30 of a district court of appeal on the day such amendment is
31 approved may continue in that office until the expiration of

1 the term. The limitation on years of service expressed in
2 Section 11(e) of Article V does not apply with respect to any
3 such person until the expiration of the term the person is
4 serving on the day the amendment is approved.

5 BE IT FURTHER RESOLVED that in accordance with the
6 requirements of section 101.161, Florida Statutes, the title
7 and substance of the amendments proposed herein shall appear
8 on the ballot as follows:

9 CONSTITUTIONAL AMENDMENT

10 ARTICLE V, SECTIONS 3, 8, 10, 11, and 12;

11 ARTICLE XII, SECTION 26

12 APPOINTMENT, CONFIRMATION, TERMS OF SUPREME COURT
13 JUSTICES, COURT OF APPEAL JUDGES; JUDICIAL NOMINATING
14 COMMISSION PROCEEDINGS; JUDICIAL QUALIFICATIONS
15 COMMISSION.--Proposes to make proceedings of judicial
16 nominating commissions public and to abolish retention
17 elections for the offices of Supreme Court justice and
18 district court of appeal judge, making the offices appointive
19 by the Governor, subject to Senate confirmation, with no one
20 eligible to serve more than 18 consecutive years. Proposes to
21 eliminate the local option provisions for the selection of
22 circuit judges and county court judges. Proposes that judicial
23 nominating commissions nominate at least three but no less
24 than one-third of the eligible applicants for any judicial
25 vacancy and requires inclusion of the name of an incumbent
26 justice or judge with respect to Supreme Court or district
27 court of appeal vacancies when the vacancy occurs as the
28 result of the expiration of the term of office unless the
29 incumbent does not desire to be considered or is not
30 constitutionally eligible. Proposes a procedure for
31 appointment. Proposes that the four electors who reside in the

1 state selected for the Judicial Qualifications Commission who
2 are members of the bar of Florida be appointed by the Governor
3 rather than by the governing body of the bar of Florida.
4 Proposes the elimination of the requirement that selection of
5 members by the board of governors of the bar of Florida be by
6 no less than a majority of the board. Removes 70-year maximum
7 age limitation for all judges and justices.
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