

**Stricken language would be deleted from and underlined language would be added to the Arkansas
Constitution.**

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4
5 By: Senator J. Hutchinson

SJR 4

SENATE JOINT RESOLUTION

8 AN AMENDMENT TO THE ARKANSAS CONSTITUTION PROVIDING
9 THAT THE GOVERNOR SHALL APPOINT JUSTICES OF THE
10 SUPREME COURT SUBJECT TO CONFIRMATION BY THE SENATE;
11 AND CREATING THE JUDICIAL NOMINATING COMMISSION TO
12 PROVIDE INFORMATION TO THE GOVERNOR CONCERNING
13 CANDIDATES FOR APPOINTMENT AS A JUSTICE OF THE
14 SUPREME COURT.

Subtitle

18 AN AMENDMENT TO THE ARKANSAS CONSTITUTION
19 CONCERNING THE APPOINTMENT OF JUSTICES OF
20 THE SUPREME COURT BY THE GOVERNOR,
21 SUBJECT TO CONFIRMATION BY THE SENATE.

22
23
24 BE IT RESOLVED BY THE SENATE OF THE NINETY-FIRST GENERAL ASSEMBLY OF THE
25 STATE OF ARKANSAS AND BY THE HOUSE OF REPRESENTATIVES, A MAJORITY OF ALL
26 MEMBERS ELECTED TO EACH HOUSE AGREEING THERETO:

27
28 That the following is proposed as an amendment to the Constitution of
29 the State of Arkansas, and upon being submitted to the electors of the state
30 for approval or rejection at the next general election for Representatives
31 and Senators, if a majority of the electors voting thereon at the election
32 adopt the amendment, the amendment shall become a part of the Constitution of
33 the State of Arkansas, to wit:

34
35 SECTION 1. Arkansas Constitution, Amendment 80, § 2(A), concerning the
36 Supreme Court, is amended to read as follows:



1 (A) The Supreme Court shall be composed of seven Justices, one of whom
2 shall serve as Chief Justice. The Justices of the Supreme Court shall be
3 selected ~~from the State at large~~ on the basis of merit and appointed as
4 provided under this amendment.

5
6 SECTION 2. Arkansas Constitution, Amendment 80, § 16(A), concerning
7 the qualifications of Supreme Court Justices, is amended to read as follows:

8 (A)(1) Justices of the Supreme Court and Judges of the Court of
9 Appeals shall have been licensed attorneys of this state for at least eight
10 years immediately preceding the date of assuming office. ~~They shall serve~~
11 ~~eight-year terms.~~

12 (2) A Justice of the Supreme Court shall serve a fourteen-year
13 term unless otherwise provided by this amendment.

14 (3) A Judge of the Court of Appeals shall serve an eight-year
15 term.

16
17 SECTION 3. Arkansas Constitution, Amendment 80, § 18, concerning the
18 Supreme Court, is amended to read as follows:

19 § 18. Election of ~~Supreme Court Justices and~~ Court of Appeals Judges.

20 (A) ~~Supreme Court Justices and~~ Court of Appeals Judges shall be
21 elected on a nonpartisan basis by a majority of qualified electors voting for
22 such office. Provided, however, the General Assembly may refer the issue of
23 merit selection of members of the ~~Supreme Court and the~~ Court of Appeals to a
24 vote of the people at any general election. If the voters approve a merit
25 selection system, the General Assembly shall enact laws to create a judicial
26 nominating commission for the purpose of nominating candidates for merit
27 selection to the ~~Supreme Court and~~ Court of Appeals.

28 (B) Vacancies ~~in these offices~~ on the Court of Appeals shall be filled
29 by appointment of the Governor, unless the voters provide otherwise in a
30 system of merit selection.

31
32 SECTION 4. Arkansas Constitution, Amendment 80, concerning the Supreme
33 Court, is amended to add additional sections to read as follows:

34 § 23. Judicial Nominating Commission.

35 (a) There is created the Judicial Nominating Commission, consisting of
36 five (5) members as follows:

1 (1)(A) Three (3) members appointed by the Governor.

2 (B)(i) The three (3) initial members appointed to the
3 commission by the Governor shall draw lots so that one (1) member serves a
4 term of two (2) years, one (1) member serves a term of four (4) years, and
5 one (1) member serves a term of six (6) years.

6 (ii) Members of the commission subsequently
7 appointed by the Governor shall serve a term of six (6) years;

8 (2)(A) One (1) member appointed by the President Pro Tempore of
9 the Senate.

10 (B)(i) The initial member appointed to the commission by
11 the President Pro Tempore shall serve a term of four (4) years.

12 (ii) Members of the commission subsequently
13 appointed by the President Pro Tempore shall serve a term of six (6) years;
14 and

15 (3)(A) One (1) member appointed by the Speaker of the House of
16 Representatives.

17 (B)(i) The initial member appointed to the commission by
18 the Speaker of the House of Representatives shall serve a term of two (2)
19 years.

20 (ii) Members of the commission subsequently
21 appointed by the Speaker of the House of Representatives shall serve a term
22 of six (6) years.

23 (b) A member of the commission may be reappointed by the appointing
24 authority.

25 (c)(1) A person holding an elected public office shall not be
26 appointed to the commission.

27 (2) A member of the commission shall not file as a candidate for
28 an elected office without first resigning from the commission.

29 (d) A member of the commission shall not be eligible for appointment
30 to the position of Justice of the Supreme Court:

31 (1) During the term of the member's appointment to the
32 commission; and

33 (2) For two (2) years following the expiration of the member's
34 term.

35 (e)(1) A vacancy on the commission shall be filled by the appointing
36 authority.

1 (2) The commission shall notify the appointing authority of a
 2 vacancy on the commission.

3 (3) The appointing authority shall appoint a replacement to fill
 4 the vacancy on the commission within thirty (30) days of notification under
 5 subdivision (e)(2) of this section.

6 (4) An appointment to fill a vacancy on the commission that
 7 occurs for any reason other than the expiration of a term shall be for the
 8 balance of the unexpired term.

9 (f) A member of the commission shall serve without compensation, but
 10 may receive reimbursement for necessary travel and expenses incurred while
 11 performing duties as a member.

12 (g) A member appointed to the commission shall be knowledgeable of the
 13 role and characteristics that should be exemplified by a member of the
 14 judiciary.

15 (h)(1) A majority of the members of the commission shall constitute a
 16 quorum for the purpose of conducting the business of the commission.

17 (2) A majority vote of the total membership of the commission is
 18 required for any action of the commission.

19 (i) The commission shall determine the policies and procedures that
 20 govern the activities of the commission, including without limitation:

21 (1) Assuring that commission proceedings are transparent and
 22 open to the public, subject to the right of the commission to conduct
 23 deliberations in a private executive session; and

24 (2) Conducting a comprehensive background check of applicants
 25 for appointment to a position of Justice of the Supreme Court and requiring a
 26 candidate to give consent for a comprehensive background check.

27
 28 § 24. Filling of Justice of the Supreme Court vacancy.

29 (a) A vacancy in a Justice of the Supreme Court position which occurs
 30 after the effective date of this section shall be filled in the following
 31 manner:

32 (1)(A) When a vacancy in a Justice of the Supreme Court position
 33 is certified to the Governor by the Chief Justice of the Supreme Court, the
 34 Governor shall submit the names of five (5) candidates for appointment as a
 35 Justice of the Supreme Court to the Judicial Nominating Commission within
 36 fifteen (15) days of the certification of the vacancy.

1 (B) The Chief Justice of the Supreme Court may certify a
2 vacancy that will occur due to the expiration of the term of a Justice of the
3 Supreme Court or a pending resignation of a Justice of the Supreme Court no
4 earlier than sixty (60) days before the end of the term or the date of the
5 pending resignation.

6 (C) If the vacancy under subdivisions (a)(1)(A) and (B) of
7 this section regards the position of Chief Justice of the Supreme Court, the
8 most senior Justice of the Supreme Court shall certify the vacancy in the
9 position of Chief Justice of the Supreme Court to the Governor.

10 (2)(A) The commission shall:

11 (i) Consider the candidates submitted under
12 subdivision (a)(1) of this section;

13 (ii) Rank the candidates in order of the
14 commission's opinion of the candidate's merit to serve as a Justice of the
15 Supreme Court, with a ranking of "1" indicating the candidate the commission
16 believes most qualified to serve as a Justice of the Supreme Court; and

17 (iii) Return the ranked list of candidates to the
18 Governor within fifteen (15) days of receipt of the names under subdivision
19 (a)(1) of this section.

20 (B) When ranking the candidates under subdivision
21 (a)(2)(A)(ii) of this section, the commission may strike up to two (2) of the
22 candidates and omit them from the ranked list of candidates submitted to the
23 Governor under subdivision (a)(2)(A)(iii) of this section; and

24 (3)(A) The Governor shall appoint one (1) of the candidates from
25 the ranked list of candidates submitted by the commission under subdivision
26 (a)(2)(A)(iii) of this section as a Justice of the Supreme Court within five
27 (5) days of his or her receipt of the ranked list.

28 (B) If there is more than one (1) vacancy in the position
29 of Justice of the Supreme Court, the Governor shall appoint a candidate for
30 each vacant position.

31 (C) When making appointments under subdivision (a)(3)(A)
32 of this section, the Governor is not required to take into account the
33 ranking of the candidates by the commission under subdivision (a)(2)(A)(ii)
34 of this section.

35 (b)(1) An appointment under subdivision (a)(3) of this section shall
36 not be effective until confirmed by the Senate.

1 (2) The Senate may consider the confirmation of an appointment
2 to the position of Justice of the Supreme Court:

3 (A) During a regular session, fiscal session, or special
4 session of the General Assembly; or

5 (B) At any time upon the call of the President Pro Tempore
6 of the Senate.

7 (3) If the Senate does not confirm an appointee to the position
8 of Justice of the Supreme Court, the President Pro Tempore shall notify the
9 Chief Justice of the Supreme Court or the most senior Justice of the Supreme
10 Court if the position at issue is Chief Justice of the Supreme Court, who
11 shall certify a vacancy in the position of Justice of the Supreme Court to
12 the Governor under subsection (a) of this section.

13 (c) A person appointed to fill a vacancy under subsection (a) of this
14 section shall not assume office until:

15 (1) Either:

16 (A) The end of the term of the Justice of the Supreme
17 Court whom the appointee shall replace; or

18 (B) The resignation of the Justice of the Supreme Court
19 whom the appointee shall replace; and

20 (2) The confirmation of the appointee by the Senate.

21 (c)(1) The term of a Justice of the Supreme Court appointed under this
22 section shall be fourteen (14) years except as otherwise provided in this
23 amendment.

24 (2) A Justice of the Supreme Court appointed to a fourteen-year
25 term is not eligible for reappointment as a Justice of the Supreme Court.

26
27 § 25. Vacancy occurring during term of office.

28 (a) Except as provided in subsection (b) of this section, a vacancy in
29 a Justice of the Supreme Court position that occurs on and after January 1,
30 2019, for any reason shall be filled as provided in § 24 of this amendment.

31 (b) A person appointed to fill a vacancy occurring for any reason
32 other than the expiration of a term of office shall serve the remainder of
33 the term of office.

34 (c)(1) If the vacant term remaining to be filled is two (2) years or
35 less, the Governor may include the name of the person appointed to serve the
36 remainder of the term as one of the five (5) candidates submitted to the

1 Judicial Nominating Commission under § 24 of this amendment for appointment
2 to a fourteen-year term.

3 (2) If a vacant term to be filled is more than two (2) years,
4 the nominee appointed is not eligible for appointment to a fourteen-year term
5 as a Justice of the Supreme Court.

6
7 § 26. Implementation of appointment of Justices of the Supreme Court.

8 (a) A Justice of the Supreme Court elected before January 1, 2019,
9 shall continue in office until the expiration of his or her elected term.

10 (b) Upon the end of his or her term, the replacement for a Justice of
11 the Supreme Court elected before January 1, 2019, shall be appointed under §
12 24 of this amendment.

13 (c) The Governor may include the name of a Justice of the Supreme
14 Court elected before January 1, 2019, as one of the five (5) candidates
15 submitted to the Judicial Nominating Commission under § 24 of this amendment
16 for appointment to a fourteen-year term.

17
18 SECTION 5. EFFECTIVE DATE. (a) This amendment shall become effective
19 on January 1, 2019.

20 (b)(1) The initial members of the Judicial Nominating Commission shall
21 be appointed and their appointment certified to the Secretary of State no
22 later than March 1, 2019.

23 (2) The Governor shall call the initial meeting of the
24 commission no later than April 1, 2019.

25
26 SECTION 6. BALLOT TITLE AND POPULAR NAME. When this amendment is
27 submitted to the electors of this state on the general election ballot:

28 (1) The title of this joint resolution shall be the ballot
29 title; and

30 (2) The popular name shall be, "An Amendment to the Arkansas
31 Constitution Providing for the Appointment of Justices of the Supreme Court
32 by the Governor Subject to Confirmation of the Senate".