

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.C.R. 1002

(Reference to Senate engrossed resolution)

1 Strike everything after the resolving clause and insert:

2 "1. Article VI, sections 12, 28, 30, 35, 37, 38, 40 and 41,
3 Constitution of Arizona, are proposed to be amended as follows if approved by
4 the voters and on proclamation of the Governor:

5 12. Superior court; election of judges in counties with a
6 population of less than six hundred thousand
7 persons; appointment of judges in counties
8 with a population of six hundred thousand
9 persons or more; term of office

10 Section 12. A. Judges of the superior court in counties
11 having a population of less than ~~two~~ SIX hundred ~~fifty~~ thousand
12 persons according to the most recent United States census shall
13 be elected by the qualified electors of their counties at the
14 general election. They shall hold office for a regular term of
15 four years except as provided by this section from and after the
16 first Monday in January next succeeding their election, and until
17 their successors are elected and qualify. The names of all
18 candidates for judge of the superior court in such counties shall
19 be placed on the regular ballot without partisan or other
20 designation except the division and title of the office.

21 B. The governor shall fill any vacancy in ~~such~~
22 **HAVING A POPULATION OF LESS THAN SIX HUNDRED THOUSAND PERSONS** by
23 appointing a person to serve until the election and qualification
24 of a successor. At the next succeeding general election
25 following the appointment of a person to fill a vacancy, a judge
26 shall be elected to serve for the remainder of the unexpired
27 term.

28 C. Judges of the superior court in counties having a
29 population of ~~two~~ SIX hundred ~~fifty~~ thousand persons or more

1 according to the most recent United States census shall BE
2 APPOINTED IN THE MANNER PROVIDED IN SECTION 37 OF THIS ARTICLE
3 AND hold office for a regular term of four years except as
4 provided by this article.

5 D. JUDGES OF THE SUPERIOR COURT HOLDING OFFICE IN COUNTIES
6 WITH A POPULATION OF LESS THAN SIX HUNDRED THOUSAND PERSONS
7 ACCORDING TO THE MOST RECENT UNITED STATES CENSUS WHO WERE
8 APPOINTED IN THE MANNER PROVIDED IN SECTION 37 OF THIS ARTICLE OR
9 RETAINED AS PROVIDED IN SECTION 38 OF THIS ARTICLE BEFORE THE
10 EFFECTIVE DATE OF THE AMENDMENT TO THIS SECTION SHALL CONTINUE TO
11 SERVE IN OFFICE FOR THE RESPECTIVE TERMS FOR WHICH THEY WERE
12 APPOINTED OR RETAINED BUT SHALL NOT BE ELIGIBLE FOR RETENTION AS
13 PROVIDED IN SECTION 38 OF THIS ARTICLE FOLLOWING THOSE
14 TERMS. FOR SUCH OFFICES, VACANCIES SHALL BE FILLED AND
15 SUCCESSORS SHALL BE ELECTED AS PROVIDED IN SUBSECTION B OF THIS
16 SECTION.

17 28. Justices and judges; dual office holding; political
18 activity; practice of law

19 Section 28. Justices and judges of courts of record shall
20 not be eligible for any other public office or for any other
21 public employment during their term of office, except that they
22 may assume another judicial office, and upon qualifying therefor,
23 the office formerly held shall become vacant. No justice or
24 judge of any court of record shall practice law during ~~his~~ THE
25 JUSTICE'S OR JUDGE'S continuance in office, nor shall ~~he~~ THE
26 JUSTICE OR JUDGE hold any office in a political party or actively
27 take part in any political campaign other than ~~his~~ THE JUSTICE'S
28 OR JUDGE'S own for ~~his~~ reelection or retention in office. Any
29 justice or judge who files nomination papers for an elective
30 office, other than for judge of the superior court or a court of
31 record inferior to the superior court in a county having a
32 population of less than ~~two~~ SIX hundred ~~fifty~~ thousand persons
33 according to the most recent United States census, forfeits ~~his~~
34 THE JUSTICE'S OR JUDGE'S judicial office.

35 30. Courts of record

36 Section 30. A. The supreme court, the court of appeals
37 and the superior court shall be courts of record. Other courts

1 of record may be established by law, but justice courts shall not
2 be courts of record.

3 B. All justices and judges of courts of record, except for
4 judges of the superior court and other courts of record inferior
5 to the superior court in counties having a population of less
6 than ~~two~~ SIX hundred ~~fifty~~ thousand persons according to the most
7 recent United States census, shall be appointed in the manner
8 provided in section 37 of this article.

9 35. Continuance in office; continued existence of
10 offices; application of prior statute and
11 rules

12 Section 35. A. All justices, judges, justices of the
13 peace and officers of any court who are holding office as such by
14 election or appointment at the time of the adoption of this
15 section ~~OR ANY AMENDMENT TO THIS SECTION~~ shall serve or continue
16 in office for the respective terms for which they are so elected
17 or for their respective unexpired terms, and until their
18 successors are elected or appointed and qualify or they are
19 retained in office pursuant to section 38 of this article;~~—~~
20 ~~provided, however,~~ EXCEPT that any justice or judge elected at
21 the general election at which this section is adopted shall serve
22 for the term for which ~~he~~ THE JUSTICE OR JUDGE is so elected.
23 The continued existence of any office heretofore legally
24 established or held shall not be abolished or repealed by the
25 adoption of this article. The statutes and rules relating to the
26 authority, jurisdiction, practice and procedure of courts,
27 judicial officers and offices in force at the time of the
28 adoption of this article and not inconsistent herewith,~~—~~ shall,
29 so far as applicable, apply to and govern such courts, judicial
30 officers and offices until amended or repealed.

31 B. All judges of the superior court holding office by
32 appointment or retention in counties with a population of ~~two~~ SIX
33 hundred ~~fifty~~ thousand persons or more according to the most
34 recent United States census at the time of the adoption of this
35 amendment ~~OR ANY SUBSEQUENT AMENDMENT~~ to this section shall serve
36 or continue in office for the respective terms for which they
37 were appointed. Upon an incumbent vacating the office of judge

1 of the superior court, whether by failing to file a declaration
2 for retention, by rejection by the qualified electors of the
3 county or resignation, the appointment shall be pursuant to
4 section 37 of this article.

5 37. Judicial vacancies and appointments; initial terms;
6 residence; age

7 Section 37. A. Within sixty days from the occurrence of a
8 vacancy in the office of a justice OF THE SUPREME COURT or A
9 judge of ~~any~~ AN INTERMEDIATE APPELLATE court of record, ~~except~~
10 ~~for vacancies occurring in the office of a judge of the superior~~
11 ~~court or a judge of a court of record inferior to the superior~~
12 ~~court,~~ the commission on appellate court appointments, ~~if the~~
13 ~~vacancy is in the supreme court or an intermediate appellate~~
14 ~~court of record,~~ shall submit to the governor the names of not
15 less than three persons nominated by it to fill such vacancy, no
16 more than two of whom shall be members of the same political
17 party unless there are more than four such nominees, in which
18 event not more than sixty ~~percentum~~ PER CENT of such nominees
19 shall be members of the same political party.

20 B. Within sixty days from the occurrence of a vacancy in
21 the office of a judge of the superior court or a judge of a court
22 of record inferior to the superior court except for vacancies
23 occurring in the office of a judge of the superior court or a
24 judge of a court of record inferior to the superior court in a
25 county having a population of less than ~~two~~ SIX hundred ~~fifty~~
26 thousand persons according to the most recent United States
27 census, the commission on trial court appointments for the county
28 in which the vacancy occurs shall submit to the governor the
29 names of not less than three persons nominated by it to fill such
30 vacancy, no more than two of whom shall be members of the same
31 political party unless there are more than four such nominees, in
32 which event no more than sixty per ~~centum~~ CENT of such nominees
33 shall be members of the same political party. A nominee shall be
34 under sixty-five years of age at the time ~~his~~ THE NOMINEE'S name
35 is submitted to the governor. Judges of the superior court shall
36 be subject to retention or rejection by a vote of the qualified
37 electors of the county from which they were appointed at the

1 general election in the manner provided by section 38 of this
2 article.

3 C. A vacancy in the office of a justice or a judge of such
4 courts of record shall be filled by appointment by the governor
5 without regard to political affiliation from one of the nominees
6 whose names ~~shall be~~ ARE submitted to ~~him~~ THE GOVERNOR as
7 hereinabove provided. In making the appointment, the governor
8 shall consider the diversity of the state's population for an
9 appellate court appointment and the diversity of the county's
10 population for a trial court appointment, however, the primary
11 consideration shall be merit. If the governor does not appoint
12 one of such nominees to fill such vacancy within sixty days after
13 their names are submitted to the governor by such commission, the
14 chief justice of the supreme court forthwith shall appoint on the
15 basis of merit alone without regard to political affiliation one
16 of such nominees to fill such vacancy. If such commission does
17 not, within sixty days after such vacancy occurs, submit the
18 names of nominees as hereinabove provided, the governor shall
19 have the power to appoint any qualified person to fill such
20 vacancy at any time thereafter prior to the time the names of the
21 nominees to fill such vacancy are submitted to the governor as
22 hereinabove provided. Each justice or judge so appointed shall
23 initially hold office for a term ending sixty days following the
24 next regular general election after the expiration of a term of
25 two years in office. Thereafter, the terms of justices or judges
26 of the supreme court and the superior court shall be as provided
27 by this article.

28 D. A person appointed to fill a vacancy on an intermediate
29 appellate court or another court of record now existing or
30 hereafter established by law shall have been a resident of the
31 counties or county in which that vacancy exists for at least one
32 year ~~prior to his~~ BEFORE THE PERSON'S appointment, in addition to
33 possessing the other required qualifications. A nominee shall be
34 under sixty-five years of age at the time ~~his~~ THE NOMINEE'S name
35 is submitted to the governor.

1 38. Declaration of candidacy; form of judicial ballot,
2 rejection and retention; failure to file
3 declaration

4 Section 38. A. A justice or judge of the supreme court or
5 an intermediate appellate court shall file in the office of the
6 secretary of state, and a judge of the superior court or other
7 court of record including such justices or judges who are holding
8 office as such by election or appointment at the time of the
9 adoption of this section **OR ANY AMENDMENT TO THIS SECTION**, except
10 for judges of the superior court and other courts of record
11 inferior to the superior court in counties having a population of
12 less than ~~two~~ **SIX** hundred ~~fifty~~ thousand persons, — according to
13 the United States census, shall file in the office of the clerk
14 of the board of supervisors of the county in which ~~he~~ **THE JUSTICE**
15 **OR JUDGE** regularly sits and resides, not less than sixty nor more
16 than ninety days ~~prior to~~ **BEFORE** the regular general election
17 next preceding the expiration of ~~his~~ **THE JUSTICE'S OR JUDGE'S**
18 term of office, a declaration of ~~his~~ **THE JUSTICE'S OR JUDGE'S**
19 desire to be retained in office, and the secretary of state shall
20 certify to the several boards of supervisors the appropriate
21 names of the candidate or candidates appearing on such
22 declarations filed in ~~his~~ **THE JUSTICE'S OR JUDGE'S** office.

23 B. The name of any justice or judge whose declaration is
24 filed as provided in this section shall be placed on the
25 appropriate official ballot at the next regular general election
26 under a nonpartisan designation and in substantially the
27 following form:

28 Shall _____, (Name of justice or judge) of the
29 _____ court be retained in office? Yes ___ No ___ (Mark X
30 after one).

31 C. If a majority of those voting on the question votes
32 "No," ~~then,~~ upon the expiration of the term for which such
33 justice or judge was serving, a vacancy shall exist, which shall
34 be filled as provided by this article. If a majority of those
35 voting on the question votes "Yes," such justice or judge shall
36 remain in office for another term, subject to removal as provided
37 by this constitution.

1 D. The votes shall be counted and canvassed and the result
2 declared as in the case of state and county elections, whereupon
3 a certificate of retention or rejection of the incumbent justice
4 or judge shall be delivered to ~~him~~ THE INCUMBENT by the secretary
5 of state or the clerk of the board of supervisors, as the case
6 may be.

7 E. If a justice or judge fails to file a declaration of
8 ~~his~~ THE JUSTICE'S OR JUDGE'S desire to be retained in office, as
9 required by this section, ~~then his~~ THE JUSTICE'S OR JUDGE'S
10 office shall become vacant upon expiration of the term for which
11 such justice or judge was serving.

12 40. Option for counties with less than six hundred
13 thousand persons

14 Section 40. Notwithstanding any provision of this article
15 to the contrary, any county having a population of less than ~~two~~
16 SIX hundred ~~fifty~~ thousand persons, ~~—~~ according to the most recent
17 United States census, ~~—~~ may choose to select its judges of the
18 superior court or of courts of record inferior to the superior
19 court as if it had a population of ~~two~~ SIX hundred ~~fifty~~ thousand
20 or more persons. Such choice shall be determined by vote of the
21 qualified electors of such county voting on the question at an
22 election called for such purpose by resolution of the board of
23 supervisors of such county. If such qualified electors approve,
24 the provisions of sections 12, 28, 30, 35, ~~through~~ 37, 38, 39, 41
25 and 42 shall apply as if such county had a population of ~~two~~ SIX
26 hundred ~~fifty~~ thousand persons or more.

27 41. Commission on trial court appointments; membership;
28 terms

29 ~~A. Except as otherwise provided, judges of the superior~~
30 ~~court in counties having a population of two hundred fifty~~
31 ~~thousand persons or more according to the most recent United~~
32 ~~States census shall hold office for a regular term of four years.~~

33 ~~B.~~ A. There shall be a nonpartisan commission on trial
34 court appointments for each county having a population of ~~two~~ SIX
35 hundred ~~fifty~~ thousand persons or more according to the most
36 recent United States census which shall be composed of the
37 following members:

1 1. The chief justice of the supreme court, who shall be
2 the chairman of the commission. In the event of the absence or
3 incapacity of the chairman the supreme court shall appoint a
4 justice ~~thereof~~ OF THE SUPREME COURT to serve in ~~his~~ THE
5 JUSTICE'S place and stead.

6 2. Five attorney members, none of whom shall reside in the
7 same supervisorial district and not more than three of whom shall
8 be members of the same political party, who are nominated by the
9 board of governors of the state bar of Arizona and who are
10 appointed by the governor subject to confirmation by the senate
11 in the manner prescribed by law.

12 3. Ten nonattorney members, no more than two of whom shall
13 reside in the same supervisorial district.

14 ~~B.~~ B. At least ninety days ~~prior to~~ BEFORE a term
15 expiring or within twenty-one days of a vacancy occurring for a
16 nonattorney member on the commission for trial court
17 appointments, the member of the board of supervisors from the
18 district in which the vacancy has occurred shall appoint a
19 nominating committee of seven members who reside in the district,
20 not more than four of whom may be from the same political party.
21 The ~~make-up~~ MAKEUP of the committee ~~shall~~, to the extent
22 feasible, SHALL reflect the diversity of the population of the
23 district. Members shall not be attorneys and shall not hold any
24 governmental office, elective or appointive, for profit. The
25 committee shall provide public notice that a vacancy exists and
26 shall solicit, review and forward to the governor all
27 applications along with the committee's recommendations for
28 appointment. The governor shall appoint two persons from each
29 supervisorial district who shall not be of the same political
30 party, subject to confirmation by the senate in the manner
31 prescribed by law.

32 ~~B.~~ C. In making or confirming appointments to trial court
33 commissions, the governor, the senate and the state bar shall
34 endeavor to see that the commission reflects the diversity of the
35 county's population.

36 ~~E.~~ D. Members of the commission shall serve staggered
37 four year terms. ~~, except that initial appointments for the five~~

1 ~~additional nonattorney members and the two additional attorney~~
2 ~~members of the commission shall be designated by the governor as~~
3 ~~follows:~~

4 ~~1. One appointment for a nonattorney member shall be for a~~
5 ~~one-year term.~~

6 ~~2. Two appointments for nonattorney members shall be for a~~
7 ~~two-year term.~~

8 ~~3. Two appointments for nonattorney members shall be for a~~
9 ~~three-year term.~~

10 ~~4. One appointment for an attorney member shall be for a~~
11 ~~one-year term.~~

12 ~~5. One appointment for an attorney member shall be for a~~
13 ~~two-year term.~~

14 ~~F.~~ E. Vacancies shall be filled for the unexpired terms
15 in the same manner as the original appointments.

16 ~~G.~~ F. Attorney members of the commission shall have
17 resided in this state and shall have been admitted to practice in
18 this state by the supreme court for at least five years and shall
19 have resided in the supervisory district from which they are
20 appointed for at least one year. Nonattorney members shall have
21 resided in this state for at least five years, shall have resided
22 in the supervisory district for at least one year before being
23 nominated and shall not be judges, retired judges ~~nor~~ OR admitted
24 to practice before the supreme court. None of the attorney or
25 nonattorney members of the commission shall hold any governmental
26 office, elective or appointive, for profit and no attorney member
27 is eligible for appointment to any judicial office of this state
28 until one year after membership in the commission terminates.

29 ~~H.~~ G. No person other than the chief justice shall serve
30 at the same time as a member of more than one judicial
31 appointment commission.

32 ~~I.~~ H. The commission shall submit the names of not less
33 than three individuals for nomination for the office of ~~the~~
34 superior court judge pursuant to section 37 of this article.

35 ~~J.~~ I. ~~Prior to~~ BEFORE making recommendations to the
36 governor, the commission shall conduct investigations, hold
37 public hearings and take public testimony. An executive session

1 as prescribed by rule may be held upon a two-thirds vote of the
2 members of the commission in a public hearing. Final decisions
3 as to recommendations shall be made without regard to political
4 affiliation in an impartial and objective manner. The commission
5 shall consider the diversity of the county's population and the
6 geographical distribution of the residences of the judges
7 throughout the county, however the primary consideration shall be
8 merit. Voting shall be in a public hearing. The expenses of
9 meetings of the commission and the attendance of members thereof
10 for travel and subsistence shall be paid from the general fund of
11 the state as state officers are paid, upon claims approved by the
12 chairman.

13 ~~K.~~ J. After public hearings the supreme court shall adopt
14 rules of procedure for the commission on trial court
15 appointments.

16 ~~L. The members of the commission who were appointed~~
17 ~~pursuant to section 36 of this article prior to the effective~~
18 ~~date of this section may continue to serve until the expiration~~
19 ~~of their normal terms. All subsequent appointments shall be made~~
20 ~~as prescribed by this section.~~

21 2. The Secretary of State shall submit this proposition to the voters
22 at the next general election as provided by article XXI, Constitution of
23 Arizona."

24 Amend title to conform

EDWIN W. FARNSWORTH

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