SENATE CONCURRENT RESOLUTION 1044

A CONCURRENT RESOLUTION

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI, SECTIONS 4, 9, 12, 37, 38, 39, 41 AND 42, CONSTITUTION OF ARIZONA; RELATING TO THE JUDICIAL DEPARTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it resolved by the Senate of the State of Arizona, the House of Representatives concurring:

1. Article VI, section 4, Constitution of Arizona, is proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

   4. **Supreme court; term of office**

   Section 4. Justices of the supreme court shall hold office for a regular term of six years DURING GOOD BEHAVIOR, except as provided by AS DETERMINED EXCLUSIVELY THROUGH THE PROVISIONS OF this article AND ARTICLES VI.I AND VIII.

2. Article VI, section 9, Constitution of Arizona, is proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

   9. **Intermediate appellate courts**

   Section 9. The jurisdiction, powers, duties and composition of any intermediate appellate court shall be as provided by law. JUDGES OF INTERMEDIATE APPELLATE COURTS SHALL HOLD OFFICE DURING GOOD BEHAVIOR, AS DETERMINED EXCLUSIVELY THROUGH THE PROVISIONS OF THIS ARTICLE AND ARTICLES VI.I AND VIII.

3. Article VI, section 12, Constitution of Arizona, is proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

   12. **Superior court; term of office**

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

   B. The governor shall fill any vacancy in such counties by appointing a person to serve until the election and qualification of a successor. At the next succeeding general election following the appointment of a person to fill a vacancy, a judge shall be elected to serve for the remainder of the unexpired term.

   Judges of the superior court in counties having a population of two hundred fifty thousand persons or more according to the most recent United States census shall hold
office for a regular term of four years DURING GOOD BEHAVIOR, except as provided by AS DETERMINED EXCLUSIVELY THROUGH THE PROVISIONS OF this article AND ARTICLES VI.I AND VIII.

4. Article VI, section 37, Constitution of Arizona, is proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

37. Judicial vacancies and appointments; residence; age

Section 37. A. Within sixty days from the occurrence of a vacancy in the office of a justice or judge of any court of record, except for vacancies occurring in the office of a judge of the superior court or a judge of a court of record inferior to the superior court, the commission on appellate court appointments, if the vacancy is in the supreme court or an intermediate appellate court of record, shall submit to the governor the names of not less than three persons nominated by it to fill such vacancy, no NOT more than two of whom shall be members of the same political party unless there are more than four such nominees, in which event not more than sixty percentum PERCENT of such nominees shall be members of the same political party.

B. Within sixty days from the occurrence of a vacancy in the office of a judge of the superior court or a judge of a court of record inferior to the superior court except for vacancies occurring in the office of a judge of the superior court or a judge of a court of record inferior to the superior court in a county having a population of less than two hundred fifty thousand persons according to the most recent United States census, the commission on trial court appointments for the county in which the vacancy occurs shall submit to the governor the names of not less than three persons nominated by it to fill such vacancy, no NOT more than two of whom shall be members of the same political party unless there are more than four such nominees, in which event no NOT more than sixty percentum PERCENT of such nominees shall be members of the same political party. A nominee shall be under sixty-five years of age at the time his THE NOMINEE'S name is submitted to the governor. Judges of the superior court shall be subject to retention or rejection by a vote of the qualified electors of the county from which they were appointed at the general election UNDER THE CONDITIONS AND in the manner provided by section 38 of this article.
C. A vacancy in the office of a justice or a judge of such courts of record shall be filled by appointment by the governor without regard to political affiliation from one of the nominees whose names shall be submitted to the governor as hereinabove provided. In making the appointment, the governor shall consider the diversity of the state's population for an appellate court appointment and the diversity of the county's population for a trial court appointment, however the primary consideration shall be merit. If the governor does not appoint one of such nominees to fill such vacancy within sixty days after their names are submitted to the governor by such commission, the chief justice of the supreme court forthwith shall appoint on the basis of merit alone without regard to political affiliation one of such nominees to fill such vacancy. If such commission does not, within sixty days after such vacancy occurs, submit the names of nominees as hereinabove provided, the governor shall have the power to appoint any qualified person to fill such vacancy at any time thereafter prior to the time the names of the nominees to fill such vacancy are submitted to the governor as hereinabove provided. Each justice or judge so appointed shall initially hold office for a term ending sixty days following the next regular general election after the expiration of a term of two years in office. Thereafter, the terms of justices or judges of the supreme court and the superior court shall be as provided by this article.

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

5. Article VI, section 38, Constitution of Arizona, is proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

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

Section 38. A. ANY justice or judge of the supreme court or an intermediate appellate court shall file in the office of the secretary of state, and ANY judge of the superior court or other court of record including such
justices or judges who are holding office as such by election or appointment at the time of the adoption of this section OR ANY AMENDMENT TO THIS SECTION except for judges of the superior court and other courts of record inferior to the superior court in counties having a population of less than two hundred fifty thousand persons, according to the United States census, shall BE SUBJECT TO A VOTE OF RETENTION ON THE OCCURRENCE OF ANY OF THE FOLLOWING:

1. A FINAL CONVICTION OF A FELONY OFFENSE IF NOT OTHERWISE REMOVED PURSUANT TO ARTICLE VI.I, SECTION 3.
2. A FINAL CONVICTION OF ANY CRIME INVOLVING FRAUD OR DISHONESTY IF NOT OTHERWISE REMOVED PURSUANT TO ARTICLE VI.I, SECTION 3.
3. AN INITIATION OF PERSONAL BANKRUPTCY PROCEEDINGS IN WHICH THE JUSTICE OR JUDGE IS A DEBTOR.
4. A FORECLOSURE OF ANY MORTGAGE FOR WHICH THE JUSTICE OR JUDGE IS A MORTGAGOR.
5. A DETERMINATION PURSUANT TO SECTION 42 OF THIS ARTICLE, BY A MAJORITY OF ALL MEMBERS OF THE COMMISSION ON JUDICIAL PERFORMANCE REVIEW, THAT THE JUSTICE OR JUDGE DOES NOT MEET JUDICIAL PERFORMANCE STANDARDS.

B. A JUSTICE OR JUDGE OF THE SUPREME COURT OR AN INTERMEDIATE APPELLATE COURT WHO IS SUBJECT TO A VOTE OF RETENTION PURSUANT TO SUBSECTION A OF THIS SECTION SHALL FILE IN THE OFFICE OF THE SECRETARY OF STATE, AND A JUDGE OF THE SUPERIOR COURT WHO IS SUBJECT TO A VOTE OF RETENTION PURSUANT TO SUBSECTION A OF THIS SECTION SHALL file in the office of the clerk of the board of supervisors of the county in which he THE JUSTICE OR JUDGE regularly sits and resides, not less than sixty nor more than ninety days prior to BEFORE the regular general election next preceding the expiration of his term of office SUBSEQUENT TO THE EVENT REQUIRING A VOTE OF RETENTION, a declaration of his THE JUSTICE'S OR JUDGE'S desire to be retained in office, and the secretary of state shall certify to the several boards of supervisors the appropriate names of the candidate or candidates appearing on such declarations filed in THE JUSTICE'S OR JUDGE'S office, EXCEPT THAT IF THE EVENT REQUIRING A VOTE OF RETENTION OCCURS LESS THAN ONE HUNDRED TWENTY DAYS BEFORE A REGULAR GENERAL ELECTION, THE DECLARATION SHALL BE FILED NOT LESS THAN SIXTY NOR MORE THAN NINETY DAYS BEFORE THE NEXT ENSURING REGULAR GENERAL ELECTION. NOT LATER THAN ONE HUNDRED TWENTY DAYS BEFORE A REGULAR GENERAL ELECTION, THE CHIEF JUSTICE OF THE SUPREME COURT SHALL PROVIDE TO THE SECRETARY OF STATE A LIST OF ALL JUSTICES OR JUDGES WHO ARE SUBJECT TO A VOTE OF
RETENTION AT SUCH ELECTION PURSUANT TO SUBSECTION A OF THIS SECTION. THE DETERMINATION OF WHETHER A JUSTICE OR JUDGE IS SUBJECT TO RETENTION SHALL BE MADE BY THE CHIEF JUSTICE OF THE SUPREME COURT, EXCEPT THAT, WITH RESPECT TO ANY EVENT REQUIRING A VOTE OF RETENTION INVOLVING THE CHIEF JUSTICE OF THE SUPREME COURT, THE DETERMINATION SHALL BE MADE BY THE VICE CHIEF JUSTICE OF THE SUPREME COURT.

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

Shall __________, (Name of justice or judge) of the _______ court be retained in office? Yes __ No __ (Mark X after one).

C. If a majority of those voting on the question votes "No," then, upon the expiration of the term for which such justice or judge was serving ON JANUARY 1 OF THE YEAR FOLLOWING THE GENERAL ELECTION, a vacancy shall exist, which shall be filled as provided by this article. If a majority of those voting on the question votes "Yes," such justice or judge shall remain in office for another term, subject to removal as provided by this constitution.

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

E. If a justice or JUDGE WHO IS SUBJECT TO RETENTION PURSUANT TO SUBSECTION A OF THIS SECTION fails to file a declaration of his THE JUSTICE'S OR JUDGE'S desire to be retained in office, as required by this section SUBSECTION B OF THIS SECTION, then his THE JUSTICE'S OR JUDGE'S office shall become vacant upon expiration of the term for which such justice or judge was serving ON JANUARY 1 OF THE YEAR FOLLOWING THE GENERAL ELECTION IN WHICH THE JUSTICE OR JUDGE WOULD HAVE BEEN A CANDIDATE FOR RETENTION.

G. ANY JUDGE OF AN INTERMEDIATE APPELLATE COURT WHO IS SUBJECT TO A VOTE OF RETENTION PURSUANT TO SUBSECTION A OF THIS SECTION SHALL BE ELECTED FOR RETENTION ON A STATEWIDE BASIS AND ALL OTHERWISE ELIGIBLE REGISTERED VOTERS IN THIS STATE ARE ELIGIBLE TO VOTE ON SUCH RETENTION ELECTIONS.
6. Article VI, section 39, Constitution of Arizona, is proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

39. Retirement of justices and judges; vacancies

Section 39. A. On attaining the age of seventy years a justice or judge of a court of record shall retire and his judicial office shall be vacant, except as otherwise provided in section 35 of this article. In addition to becoming vacant as provided in this section, the office of a justice or judge of any court of record becomes vacant upon his death or his voluntary retirement pursuant to statute or his voluntary resignation, and also, if subject to a vote of retention as provided in section 38 of this article, upon the expiration of his term on January 1 of the year next following a general election at which a majority of those voting on the question of his retention vote in the negative or for which general election he is required, but fails, to file a declaration of his desire to be retained in office.

B. This section is alternative to and cumulative with the methods of removal of judges and justices provided in Article VI.I and Article VIII, parts 1 and 2 of Article 6.1 of this Constitution.

7. Article VI, section 41, Constitution of Arizona, is proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

41. Superior court divisions; commission on trial court appointments; membership; terms

Section 41. A. Except as otherwise provided, judges of the superior court in counties having a population of two hundred fifty thousand persons or more according to the most recent United States census shall hold office for a regular term of four years during good behavior, as determined exclusively through the provisions of this article and Articles VI.I and VIII.

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

1. The chief justice of the supreme court, who shall be the chairman of the commission. In the event of the absence
or incapacity of the chairman the supreme court shall appoint a justice thereof to serve in his place and stead.

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

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

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

D. In making or confirming appointments to trial court commissions, the governor, the senate and the state bar shall endeavor to see that the commission reflects the diversity of the county's population.

E. Members of the commission shall serve staggered four year terms, except that initial appointments for the five additional nonattorney members and the two additional attorney members of the commission shall be designated by the governor as follows:

1. One appointment for a nonattorney member shall be for a one-year term.
2. Two appointments for nonattorney members shall be for a two-year term.
3. Two appointments for nonattorney members shall be for a three-year term.
4. One appointment for an attorney member shall be for a one-year term.
5. One appointment for an attorney member shall be for a two-year term.

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

G. Attorney members of the commission shall have resided in this state and shall have been admitted to practice in this state by the supreme court for at least five years and shall have resided in the supervisorial district from which they are appointed for at least one year. Nonattorney members shall have resided in this state for at least five years, shall have resided in the supervisorial district for at least one year before being nominated and shall not be judges, retired judges nor admitted to practice before the supreme court. None of the attorney or nonattorney members of the commission shall hold any governmental office, elective or appointive, for profit and no attorney member is eligible for appointment to any judicial office of this state until one year after membership in the commission terminates.

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

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

J. Prior to making recommendations to the governor, the commission shall conduct investigations, hold public hearings and take public testimony. An executive session as prescribed by rule may be held upon a two-thirds vote of the members of the commission in a public hearing. Final decisions as to recommendations shall be made without regard to political affiliation in an impartial and objective manner. The commission shall consider the diversity of the county's population and the geographical distribution of the residences of the judges throughout the county, however the primary consideration shall be merit. Voting shall be in a public hearing. The expenses of meetings of the commission and the attendance of members thereof for travel and subsistence shall be paid from the general fund of the state as state officers are paid, upon claims approved by the chairman.

K. After public hearings the supreme court shall adopt rules of procedure for the commission on trial court appointments.
L. The members of the commission who were appointed pursuant to section 36 of this article prior to the effective date of this section may continue to serve until the expiration of their normal terms. All subsequent appointments shall be made as prescribed by this section.

8. Article VI, section 42, Constitution of Arizona, is proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

42. Retention evaluation of justices and judges

Section 42. A. The supreme court shall adopt, after public hearings, and administer for all justices and judges of the intermediate appellate courts and judges who—file a declaration to be retained in office, of the superior court in a county with a population of two hundred fifty thousand persons or more according to the most recent United States census or in a county with a population of less than two hundred fifty thousand persons according to the most recent United States census that chooses to select its judges of the superior court as if it had a population of two hundred fifty thousand persons or more a commission and process, established by court rules for evaluating judicial performance. The rules shall provide that each justice or judge shall be evaluated not less frequently than every four years from the year of first appointment, and shall include written performance standards and performance reviews which survey opinions of persons who have knowledge of the justice's or judge's performance.

B. A majority of the house of representatives shall appoint one member to the commission and a majority of the senate shall appoint one member to the commission. The house of representatives and senate have complete discretion in appointing members pursuant to this section, and such members shall have rights and privileges equal to all other members of the commission.

C. Upon written request of a legislator, the commission shall investigate an allegation that a justice or judge has engaged in a pattern of malfeasance in office. If the commission finds that the justice or judge has engaged in a pattern of malfeasance in office, the commission shall make a determination that the justice or judge does not meet judicial performance standards.

D. The public shall be afforded a full and fair opportunity for participation in the evaluation process through public hearings, dissemination of evaluation reports to voters and any other methods as the court deems advisable.
Sec. 9. Effective date
If approved by a majority of the votes cast thereon, this act applies retroactively to from and after October 31, 2024, and the returns of any votes of retention or rejection in the general election held on November 5, 2024 shall not be included in the official canvass or result in the issuance of any certificate of retention or rejection.

Sec. 10. Findings
The People of the State of Arizona find and declare as follows:

1. Judicial retention elections in the State of Arizona are simultaneously too infrequent, because judges whose conduct proves unsuitable for judicial office may serve for years before next standing for retention; and too frequent, because judges whose conduct is objectively satisfactory stand for retention regardless of their good behavior and performance.

2. The voters of the State of Arizona have exercised the right not to retain a judge in 0.3% of judicial retention elections to date, indicating both general satisfaction with judicial performance in the state and an ongoing public interest in electoral accountability for the judicial branch.

3. The number of judicial retention elections appearing on the ballot unduly increases the financial cost of elections, the length and complexity of ballots, and the complexity and duration of vote tabulation.

4. The voters of the State of Arizona will be able to research judicial performance more efficiently, and persons who are not well suited for judicial office will be unable to "hide in a crowd" of peers, when retention elections feature only judicial officers whose conduct falls below objective standards.

5. It is appropriate to amend the process of judicial retention elections to ensure accountability for the judicial officers of this State and to increase the efficiency of our elections.

Sec. 11. Short title
This act shall be titled the "Judicial Accountability Act of 2024."

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