

PROPOSED

SENATE AMENDMENTS TO H.C.R. 2017

(Reference to House 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
4 by the voters and on proclamation of the Governor:

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

1 B. The governor shall fill any vacancy in ~~such~~ counties
2 HAVING A POPULATION OF LESS THAN EIGHT HUNDRED THOUSAND PERSONS
3 by appointing a person to serve until the election and
4 qualification of a successor. At the next succeeding general
5 election following the appointment of a person to fill a
6 vacancy, a judge shall be elected to serve for the remainder of
7 the unexpired term.

8 C. Judges of the superior court in counties having a
9 population of ~~two~~ EIGHT hundred ~~fifty~~ thousand persons or more
10 according to the most recent United States census shall BE
11 APPOINTED IN THE MANNER PROVIDED IN SECTION 37 OF THIS ARTICLE
12 AND hold office for a regular term of four years except as
13 provided by this article.

14 D. JUDGES OF THE SUPERIOR COURT HOLDING OFFICE IN
15 COUNTIES WITH A POPULATION OF LESS THAN EIGHT HUNDRED THOUSAND
16 PERSONS ACCORDING TO THE MOST RECENT UNITED STATES CENSUS WHO
17 WERE APPOINTED IN THE MANNER PROVIDED IN SECTION 37 OF THIS
18 ARTICLE OR RETAINED AS PROVIDED IN SECTION 38 OF THIS ARTICLE
19 BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION
20 SHALL CONTINUE TO SERVE IN OFFICE FOR THE RESPECTIVE TERMS FOR
21 WHICH THEY WERE APPOINTED OR RETAINED BUT SHALL NOT BE ELIGIBLE
22 FOR RETENTION AS PROVIDED IN SECTION 38 OF THIS ARTICLE
23 FOLLOWING THOSE TERMS. FOR SUCH OFFICES, VACANCIES SHALL BE
24 FILLED AND SUCCESSORS SHALL BE ELECTED AS PROVIDED IN
25 SUBSECTION B OF THIS SECTION.

26 2. Article VI, section 28, Constitution of Arizona, is proposed to
27 be amended as follows if approved by the voters and on proclamation of the
28 Governor:

29 28. Justices and judges; dual office holding;
30 political activity; practice of law

31 Section 28. Justices and judges of courts of record
32 shall not be eligible for any other public office or for any

1 other public employment during their term of office, except
2 that they may assume another judicial office, and upon
3 qualifying therefor, the office formerly held shall become
4 vacant. No justice or judge of any court of record shall
5 practice law during ~~his~~ THE JUSTICE'S OR JUDGE'S continuance in
6 office, nor shall ~~he~~ THE JUSTICE OR JUDGE hold any office in a
7 political party or actively take part in any political campaign
8 other than ~~his~~ THE JUSTICE'S OR JUDGE'S own for ~~his~~ reelection
9 or retention in office. Any justice or judge who files
10 nomination papers for an elective office, other than for judge
11 of the superior court or a court of record inferior to the
12 superior court in a county having a population of less than ~~two~~
13 EIGHT hundred ~~fifty~~ thousand persons according to the most
14 recent United States census, forfeits ~~his~~ THE JUSTICE'S OR
15 JUDGE'S judicial office.

16 3. Article VI, section 30, Constitution of Arizona, is proposed to
17 be amended as follows if approved by the voters and on proclamation of the
18 Governor:

19 30. Courts of record

20 Section 30. A. The supreme court, the court of appeals
21 and the superior court shall be courts of record. Other courts
22 of record may be established by law, but justice courts shall
23 not be courts of record.

24 B. All justices and judges of courts of record, except
25 for judges of the superior court and other courts of record
26 inferior to the superior court in counties having a population
27 of less than ~~two~~ EIGHT hundred ~~fifty~~ thousand persons according
28 to the most recent United States census, shall be appointed in
29 the manner provided in section 37 of this article.

1 4. Article VI, section 35, Constitution of Arizona, is proposed to
2 be amended as follows if approved by the voters and on proclamation of the
3 Governor:

4 35. Continuance in office; continued existence of
5 offices; application of prior statute and
6 rules

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

27 B. All judges of the superior court holding office by
28 appointment or retention in counties with a population of ~~two~~
29 **EIGHT** hundred ~~fifty~~ thousand persons or more according to the
30 most recent United States census at the time of the adoption of
31 this amendment **OR ANY SUBSEQUENT AMENDMENT** to this section
32 shall serve or continue in office for the respective terms for

1 which they were appointed. Upon an incumbent vacating the
2 office of judge of the superior court, whether by failing to
3 file a declaration for retention, by rejection by the qualified
4 electors of the county or resignation, the appointment shall be
5 pursuant to section 37 of this article.

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

9 37. Judicial vacancies and appointments; initial
10 terms; residence; age

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

24 B. Within sixty days from the occurrence of a vacancy in
25 the office of a judge of the superior court or a judge of a
26 court of record inferior to the superior court except for
27 vacancies occurring in the office of a judge of the superior
28 court or a judge of a court of record inferior to the superior
29 court in a county having a population of less than ~~two~~ EIGHT
30 hundred ~~fifty~~ thousand persons according to the most recent
31 United States census, the commission on trial court
32 appointments for the county in which the vacancy occurs shall

1 submit to the governor the names of not less than three persons
2 nominated by it to fill such vacancy, no more than two of whom
3 shall be members of the same political party unless there are
4 more than four such nominees, in which event no more than sixty
5 ~~per centum~~ PERCENT of such nominees shall be members of the
6 same political party. A nominee shall be under sixty-five
7 years of age at the time ~~his~~ THE NOMINEE'S name is submitted to
8 the governor. Judges of the superior court shall be subject to
9 retention or rejection by a vote of the qualified electors of
10 the county from which they were appointed at the general
11 election in the manner provided by section 38 of this article.

12 C. A vacancy in the office of a justice or a judge of
13 such courts of record shall be filled by appointment by the
14 governor without regard to political affiliation from one of
15 the nominees whose names ~~shall be~~ ARE submitted to ~~him~~ THE
16 GOVERNOR as hereinabove provided. In making the appointment,
17 the governor shall consider the diversity of the state's
18 population for an appellate court appointment and the diversity
19 of the county's population for a trial court appointment,
20 however, the primary consideration shall be merit. If the
21 governor does not appoint one of such nominees to fill such
22 vacancy within sixty days after their names are submitted to
23 the governor by such commission, the chief justice of the
24 supreme court forthwith shall appoint on the basis of merit
25 alone without regard to political affiliation one of such
26 nominees to fill such vacancy. If such commission does not,
27 within sixty days after such vacancy occurs, submit the names
28 of nominees as hereinabove provided, the governor shall have
29 the power to appoint any qualified person to fill such vacancy
30 at any time thereafter prior to the time the names of the
31 nominees to fill such vacancy are submitted to the governor as
32 hereinabove provided. Each justice or judge so appointed shall

1 initially hold office for a term ending sixty days following
2 the next regular general election after the expiration of a
3 term of two years in office. Thereafter, the terms of justices
4 or judges of the supreme court and the superior court shall be
5 as provided by this article.

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

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

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

21 Section 38. A. A justice or judge of the supreme court
22 or an intermediate appellate court shall file in the office of
23 the secretary of state, and a judge of the superior court or
24 other court of record including such justices or judges who are
25 holding office as such by election or appointment at the time
26 of the adoption of this section OR ANY AMENDMENT TO THIS
27 SECTION, except for judges of the superior court and other
28 courts of record inferior to the superior court in counties
29 having a population of less than ~~two~~ EIGHT hundred ~~fifty~~
30 thousand persons, according to the United States census, shall
31 file in the office of the clerk of the board of supervisors of
32 the county in which ~~he~~ THE JUSTICE OR JUDGE regularly sits and

1 resides, not less than sixty nor more than ninety days ~~prior to~~
2 **BEFORE** the regular general election next preceding the
3 expiration of ~~his~~ **THE JUSTICE'S OR JUDGE'S** term of office, a
4 declaration of ~~his~~ **THE JUSTICE'S OR JUDGE'S** desire to be
5 retained in office, and the secretary of state shall certify to
6 the several boards of supervisors the appropriate names of the
7 candidate or candidates appearing on such declarations filed in
8 ~~his~~ **THE JUSTICE'S OR JUDGE'S** office.

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

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

17 C. If a majority of those voting on the question votes
18 "No," ~~then,~~ upon the expiration of the term for which such
19 justice or judge was serving, a vacancy shall exist, which
20 shall be filled as provided by this article. If a majority of
21 those voting on the question votes "Yes," such justice or judge
22 shall remain in office for another term, subject to removal as
23 provided by this constitution.

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

30 E. If a justice or judge fails to file a declaration of
31 ~~his~~ **THE JUSTICE'S OR JUDGE'S** desire to be retained in office,
32 as required by this section, ~~then his~~ **THE JUSTICE'S OR JUDGE'S**

1 office shall become vacant upon expiration of the term for
2 which such justice or judge was serving.

3 7. Article VI, section 40, Constitution of Arizona, is proposed to
4 be amended as follows if approved by the voters and on proclamation of the
5 Governor:

6 40. Option for counties with less than eight hundred
7 thousand persons

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

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

25 41. Commission on trial court appointments:
26 membership; terms

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

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

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

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

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

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

1 recommendations for appointment. The governor shall appoint
2 two persons from each supervisorial district who shall not be
3 of the same political party, subject to confirmation by the
4 senate in the manner prescribed by law.

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

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

14 1. ~~One appointment for a nonattorney member shall be for~~
15 ~~a one-year term.~~

16 2. ~~Two appointments for nonattorney members shall be for~~
17 ~~a two-year term.~~

18 3. ~~Two appointments for nonattorney members shall be for~~
19 ~~a three-year term.~~

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

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

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

26 ~~G.~~ F. Attorney members of the commission shall have
27 resided in this state and shall have been admitted to practice
28 in this state by the supreme court for at least five years and
29 shall have resided in the supervisorial district from which
30 they are appointed for at least one year. Nonattorney members
31 shall have resided in this state for at least five years, shall
32 have resided in the supervisorial district for at least one

1 year before being nominated and shall not be judges, retired
2 judges ~~nor~~ OR admitted to practice before the supreme court.
3 None of the attorney or nonattorney members of the commission
4 shall hold any governmental office, elective or appointive, for
5 profit and no attorney member is eligible for appointment to
6 any judicial office of this state until one year after
7 membership in the commission terminates.

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

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

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

29 ~~K.~~ J. After public hearings the supreme court shall
30 adopt rules of procedure for the commission on trial court
31 appointments.

1 ~~L. The members of the commission who were appointed~~
2 ~~pursuant to section 36 of this article prior to the effective~~
3 ~~date of this section may continue to serve until the expiration~~
4 ~~of their normal terms. All subsequent appointments shall be~~
5 ~~made as prescribed by this section.~~

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

9 Amend title to conform

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