

REFERENCE TITLE: **judges; merit selection; population**

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
Second Regular Session  
2022

## **HCR 2018**

Introduced by  
Representatives Carter: Barton, Biasiucci, Blackman, Cook, Dunn, Fillmore,  
Finchem, Hoffman, Kavanagh, Martinez, Nguyen, Parker, Wilmeth

### **A CONCURRENT RESOLUTION**

**PROPOSING AN AMENDMENT TO THE CONSTITUTION OF ARIZONA; AMENDING ARTICLE VI, SECTIONS 12, 28, 30, 35, 37, 38, 40 AND 41, CONSTITUTION OF ARIZONA; RELATING TO THE JUDICIAL DEPARTMENT.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona,  
2 the Senate concurring:

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

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

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

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

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

36 D. JUDGES OF THE SUPERIOR COURT HOLDING OFFICE IN  
37 COUNTIES WITH A POPULATION OF LESS THAN EIGHT HUNDRED THOUSAND  
38 PERSONS ACCORDING TO THE MOST RECENT UNITED STATES CENSUS WHO  
39 WERE APPOINTED IN THE MANNER PROVIDED IN SECTION 37 OF THIS  
40 ARTICLE OR RETAINED AS PROVIDED IN SECTION 38 OF THIS ARTICLE  
41 BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION  
42 SHALL CONTINUE TO SERVE IN OFFICE FOR THE RESPECTIVE TERMS FOR  
43 WHICH THEY WERE APPOINTED OR RETAINED BUT SHALL NOT BE  
44 ELIGIBLE FOR RETENTION AS PROVIDED IN SECTION 38 OF THIS  
45 ARTICLE FOLLOWING THOSE TERMS. FOR SUCH OFFICES, VACANCIES

1           SHALL BE FILLED AND SUCCESSORS SHALL BE ELECTED AS PROVIDED IN  
2           SUBSECTION B OF THIS SECTION.

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

6           28. Justices and judges; dual office holding;  
7           political activity; practice of law

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

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

28           30. Courts of record

29           Section 30. A. The supreme court, the court of appeals  
30 and the superior court shall be courts of record. Other  
31 courts of record may be established by law, but justice courts  
32 shall not be courts of record.

33           B. All justices and judges of courts of record, except  
34 for judges of the superior court and other courts of record  
35 inferior to the superior court in counties having a population  
36 of less than ~~two~~ EIGHT hundred ~~fifty~~ thousand persons  
37 according to the most recent United States census, shall be  
38 appointed in the manner provided in section 37 of this  
39 article.

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

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

Section 35. A. All justices, judges, justices of the peace and officers of any court 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** shall serve or continue in office for the respective terms for which they are so elected or for their respective unexpired terms, and until their successors are elected or appointed and qualify or they are retained in office pursuant to section 38 of this article; ~~provided, however,~~ **EXCEPT** that any justice or judge elected at the general election at which this section is adopted shall serve for the term for which ~~he~~ **THE JUSTICE OR JUDGE** is so elected. The continued existence of any office heretofore legally established or held shall not be abolished or repealed by the adoption of this article. The statutes and rules relating to the authority, jurisdiction, practice and procedure of courts, judicial officers and offices in force at the time of the adoption of this article and not inconsistent herewith, ~~shall,~~ so far as applicable, apply to and govern such courts, judicial officers and offices until amended or repealed.

B. All judges of the superior court holding office by appointment or retention in counties with a population of ~~two~~ **EIGHT** hundred ~~fifty~~ thousand persons or more according to the most recent United States census at the time of the adoption of this amendment **OR ANY SUBSEQUENT AMENDMENT** to this section shall serve or continue in office for the respective terms for which they were appointed. Upon an incumbent vacating the office of judge of the superior court, whether by failing to file a declaration for retention, by rejection by the qualified electors of the county or resignation, the appointment shall be pursuant to section 37 of this article.

5. 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; initial terms; residence; age

Section 37. A. Within sixty days from the occurrence of a vacancy in the office of a justice **OF THE SUPREME COURT** or **A** judge of ~~any~~ **AN INTERMEDIATE APPELLATE** 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

1 appointments, ~~if the vacancy is in the supreme court or an~~  
2 ~~intermediate appellate court of record,~~ shall submit to the  
3 governor the names of not less than three persons nominated by  
4 it to fill such vacancy, no more than two of whom shall be  
5 members of the same political party unless there are more than  
6 four such nominees, in which event not more than sixty  
7 ~~percentum~~ PER CENT of such nominees shall be members of the  
8 same political party.

9 B. Within sixty days from the occurrence of a vacancy  
10 in the office of a judge of the superior court or a judge of a  
11 court of record inferior to the superior court except for  
12 vacancies occurring in the office of a judge of the superior  
13 court or a judge of a court of record inferior to the superior  
14 court in a county having a population of less than ~~two~~ EIGHT  
15 hundred ~~fifty~~ thousand persons according to the most recent  
16 United States census, the commission on trial court  
17 appointments for the county in which the vacancy occurs shall  
18 submit to the governor the names of not less than three  
19 persons nominated by it to fill such vacancy, no more than two  
20 of whom shall be members of the same political party unless  
21 there are more than four such nominees, in which event no more  
22 than sixty per ~~centum~~ CENT of such nominees shall be members  
23 of the same political party. A nominee shall be under sixty-  
24 five years of age at the time ~~his~~ THE NOMINEE'S name is  
25 submitted to the governor. Judges of the superior court shall  
26 be subject to retention or rejection by a vote of the  
27 qualified electors of the county from which they were  
28 appointed at the general election in the manner provided by  
29 section 38 of this article.

30 C. A vacancy in the office of a justice or a judge of  
31 such courts of record shall be filled by appointment by the  
32 governor without regard to political affiliation from one of  
33 the nominees whose names ~~shall be~~ ARE submitted to ~~him~~ THE  
34 GOVERNOR as hereinabove provided. In making the appointment,  
35 the governor shall consider the diversity of the state's  
36 population for an appellate court appointment and the  
37 diversity of the county's population for a trial court  
38 appointment, however, the primary consideration shall be  
39 merit. If the governor does not appoint one of such nominees  
40 to fill such vacancy within sixty days after their names are  
41 submitted to the governor by such commission, the chief  
42 justice of the supreme court forthwith shall appoint on the  
43 basis of merit alone without regard to political affiliation  
44 one of such nominees to fill such vacancy. If such commission  
45 does not, within sixty days after such vacancy occurs, submit

1 the names of nominees as hereinabove provided, the governor  
2 shall have the power to appoint any qualified person to fill  
3 such vacancy at any time thereafter prior to the time the  
4 names of the nominees to fill such vacancy are submitted to  
5 the governor as hereinabove provided. Each justice or judge  
6 so appointed shall initially hold office for a term ending  
7 sixty days following the next regular general election after  
8 the expiration of a term of two years in office. Thereafter,  
9 the terms of justices or judges of the supreme court and the  
10 superior court shall be as provided by this article.

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

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

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

26 Section 38. A. A justice or judge of the supreme court  
27 or an intermediate appellate court shall file in the office of  
28 the secretary of state, and a judge of the superior court or  
29 other court of record including such justices or judges who  
30 are holding office as such by election or appointment at the  
31 time of the adoption of this section OR ANY AMENDMENT TO THIS  
32 SECTION, except for judges of the superior court and other  
33 courts of record inferior to the superior court in counties  
34 having a population of less than ~~two~~ EIGHT hundred ~~fifty~~  
35 thousand persons; according to the United States census,  
36 shall file in the office of the clerk of the board of  
37 supervisors of the county in which ~~he~~ THE JUSTICE OR JUDGE  
38 regularly sits and resides, not less than sixty nor more than  
39 ninety days ~~prior to~~ BEFORE the regular general election next  
40 preceding the expiration of ~~his~~ THE JUSTICE'S OR JUDGE'S term  
41 of office, a declaration of ~~his~~ THE JUSTICE'S OR JUDGE'S  
42 desire to be retained in office, and the secretary of state  
43 shall certify to the several boards of supervisors the  
44 appropriate names of the candidate or candidates appearing on

1 such declarations filed in ~~his~~ THE JUSTICE'S OR JUDGE'S  
2 office.

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

8 Shall \_\_\_\_\_, (Name of justice or judge) of the  
9 \_\_\_\_\_ court be retained in office? Yes \_\_\_ No \_\_\_ (Mark X  
10 after one).

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

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

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

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

32 40. Option for counties with less than eight  
33 hundred thousand persons

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

1 apply as if such county had a population of ~~two~~ EIGHT hundred  
2 fifty thousand persons or more.

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

6 41. Commission on trial court appointments;  
7 membership; terms

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

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

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

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

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

31 ~~C.~~ B. At least ninety days ~~prior to~~ BEFORE a term  
32 expiring or within twenty-one days of a vacancy occurring for  
33 a nonattorney member on the commission for trial court  
34 appointments, the member of the board of supervisors from the  
35 district in which the vacancy has occurred shall appoint a  
36 nominating committee of seven members who reside in the  
37 district, not more than four of whom may be from the same  
38 political party. The ~~make-up~~ MAKEUP of the committee ~~shall~~,  
39 to the extent feasible, SHALL reflect the diversity of the  
40 population of the district. Members shall not be attorneys  
41 and shall not hold any governmental office, elective or  
42 appointive, for profit. The committee shall provide public  
43 notice that a vacancy exists and shall solicit, review and  
44 forward to the governor all applications along with the  
45 committee's recommendations for appointment. The governor



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

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

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

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

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

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

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

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

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

25 ~~G.~~ F. Attorney members of the commission shall have  
26 resided in this state and shall have been admitted to practice  
27 in this state by the supreme court for at least five years and  
28 shall have resided in the supervisorial district from which  
29 they are appointed for at least one year. Nonattorney members  
30 shall have resided in this state for at least five years,  
31 shall have resided in the supervisorial district for at least  
32 one year before being nominated and shall not be judges,  
33 retired judges ~~nor~~ OR admitted to practice before the supreme  
34 court. None of the attorney or nonattorney members of the  
35 commission shall hold any governmental office, elective or  
36 appointive, for profit and no attorney member is eligible for  
37 appointment to any judicial office of this state until one  
38 year after membership in the commission terminates.

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

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

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

17           ~~K.~~ J. After public hearings the supreme court shall  
18 adopt rules of procedure for the commission on trial court  
19 appointments.

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

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