

REFERENCE TITLE: **judicial retention elections**

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SCR 1044

Introduced by
Senators Gowan: Champ

A CONCURRENT RESOLUTION

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

6 4. Supreme court; term of office

7 Section 4. Justices of the supreme court shall hold
8 office ~~for a regular term of six years~~ DURING GOOD BEHAVIOR,
9 except as provided by this article.

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

13 12. Superior court; term of office

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

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

32 Judges of the superior court in counties having a
33 population of two hundred fifty thousand persons or more
34 according to the most recent United States census shall hold
35 office ~~for a regular term of four years~~ DURING GOOD BEHAVIOR,
36 except as provided by this article.

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

40 37. Judicial vacancies and appointments; residence;
41 age

42 Section 37. A. Within sixty days from the occurrence of
43 a vacancy in the office of a justice or judge of any court of
44 record, except for vacancies occurring in the office of a
45 judge of the superior court or a judge of a court of record

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

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

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

1 does not, within sixty days after such vacancy occurs, submit
 2 the names of nominees as hereinabove provided, the governor
 3 shall have the power to appoint any qualified person to fill
 4 such vacancy at any time thereafter prior to the time the
 5 names of the nominees to fill such vacancy are submitted to
 6 the governor as hereinabove provided. ~~Each justice or judge~~
 7 ~~so appointed shall initially hold office for a term ending~~
 8 ~~sixty days following the next regular general election after~~
 9 ~~the expiration of a term of two years in office. Thereafter,~~
 10 ~~the terms of justices or judges of the supreme court and the~~
 11 ~~superior court shall be as provided by this article.~~

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

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

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

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

- 39 1. A CONVICTION OF A FELONY OFFENSE.
- 40 2. A CONVICTION OF ANY CRIME INVOLVING FRAUD OR
- 41 DISHONESTY.
- 42 3. AN INITIATION OF PERSONAL BANKRUPTCY PROCEEDINGS IN
- 43 WHICH THE JUSTICE OR JUDGE IS A DEBTOR.
- 44 4. A FORECLOSURE OF ANY MORTGAGE FOR WHICH THE JUSTICE
- 45 OR JUDGE IS A MORTGAGOR.

1 5. A DETERMINATION PURSUANT TO SECTION 42 OF THIS
2 ARTICLE THAT THE JUSTICE OR JUDGE DOES NOT MEET JUDICIAL
3 PERFORMANCE STANDARDS.

4 6. A REPRIMAND OF THE JUSTICE OR JUDGE BY THE
5 COMMISSION ON JUDICIAL CONDUCT.

6 7. A RECOMMENDATION BY THE COMMISSION ON JUDICIAL
7 CONDUCT THAT THE JUSTICE OR JUDGE BE CENSURED, DISQUALIFIED,
8 SUSPENDED, RETIRED OR REMOVED FROM OFFICE.

9 B. A JUSTICE OR JUDGE OF THE SUPREME COURT OR AN
10 INTERMEDIATE APPELLATE COURT WHO IS SUBJECT TO A VOTE OF
11 RETENTION PURSUANT TO SUBSECTION A OF THIS SECTION SHALL FILE
12 IN THE OFFICE OF THE SECRETARY OF STATE, AND A JUDGE OF THE
13 SUPERIOR COURT WHO IS SUBJECT TO A VOTE OF RETENTION PURSUANT
14 TO SUBSECTION A OF THIS SECTION SHALL file in the office of
15 the clerk of the board of supervisors of the county in which
16 ~~he~~ THE JUSTICE OR JUDGE regularly sits and resides, not less
17 than sixty nor more than ninety days ~~prior to~~ BEFORE the
18 regular general election ~~next preceding the expiration of his~~
19 ~~term of office~~ SUBSEQUENT TO THE EVENT REQUIRING A VOTE OF
20 RETENTION, a declaration of ~~his~~ THE JUSTICE'S OR JUDGE'S
21 desire to be retained in office, and the secretary of state
22 shall certify to the several boards of supervisors the
23 appropriate names of the candidate or candidates appearing on
24 such declarations filed in ~~his~~ THE JUSTICE'S OR JUDGE'S
25 office, EXCEPT THAT IF THE EVENT REQUIRING A VOTE OF RETENTION
26 OCCURS LESS THAN ONE HUNDRED TWENTY DAYS BEFORE A REGULAR
27 GENERAL ELECTION, THE DECLARATION SHALL BE FILED NOT LESS THAN
28 SIXTY NOR MORE THAN NINETY DAYS BEFORE THE NEXT ENSUING
29 REGULAR GENERAL ELECTION. NOT LATER THAN ONE HUNDRED TWENTY
30 DAYS BEFORE A REGULAR GENERAL ELECTION, THE CHIEF JUSTICE OF
31 THE SUPREME COURT SHALL PROVIDE TO THE SECRETARY OF STATE A
32 LIST OF ALL JUSTICES OR JUDGES WHO ARE SUBJECT TO A VOTE OF
33 RETENTION AT SUCH ELECTION PURSUANT TO SUBSECTION A OF THIS
34 SECTION. THE DETERMINATION OF WHETHER A JUSTICE OR JUDGE IS
35 SUBJECT TO RETENTION SHALL BE MADE BY THE CHIEF JUSTICE OF THE
36 SUPREME COURT, EXCEPT THAT, WITH RESPECT TO ANY EVENT
37 REQUIRING A VOTE OF RETENTION INVOLVING THE CHIEF JUSTICE OF
38 THE SUPREME COURT, THE DETERMINATION SHALL BE MADE BY THE VICE
39 CHIEF JUSTICE OF THE SUPREME COURT.

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

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

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

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

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

27 5. Article VI, section 39, Constitution of Arizona, is proposed to
28 be amended as follows if approved by the voters and on proclamation of the
29 Governor:

30 39. Retirement of justices and judges; vacancies
31 Section 39. A. On attaining the age of seventy years a
32 justice or judge of a court of record shall retire and ~~his~~ THE
33 JUSTICE'S OR JUDGE'S judicial office shall be vacant, except
34 as otherwise provided in section 35 of this article. In
35 addition to becoming vacant as provided in this section, the
36 office of a justice or judge of any court of record becomes
37 vacant ~~upon his~~ ON THE JUSTICE'S OR JUDGE'S death or ~~his~~ THE
38 JUSTICE'S OR JUDGE'S voluntary retirement pursuant to statute
39 or ~~his~~ THE JUSTICE'S OR JUDGE'S voluntary resignation, and
40 also, IF SUBJECT TO A VOTE OF RETENTION as provided in section
41 38 of this article, ~~upon the expiration of his term~~ ON JANUARY
42 1 OF THE YEAR next following a general election at which a
43 majority of those voting on the question of ~~his~~ THE JUSTICE'S
44 OR JUDGE'S retention vote in the negative or for which general
45 election ~~he~~ THE JUSTICE OR JUDGE is required, but fails, to

1 file a declaration of ~~his~~ THE JUSTICE'S OR JUDGE'S desire to
2 be retained in office.

3 B. This section is alternative to and cumulative with
4 the methods of removal of judges and justices provided in
5 ARTICLE VI.I AND ARTICLE VIII, parts 1 and 2 ~~of article 8 and~~
6 ~~article 6.1~~ of this Constitution.

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

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

12 Section 41. A. Except as otherwise provided, judges of
13 the superior court in counties having a population of two
14 hundred fifty thousand persons or more according to the most
15 recent United States census shall hold office ~~for a regular~~
16 ~~term of four years~~ DURING GOOD BEHAVIOR.

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

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

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

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

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

1 notice that a vacancy exists and shall solicit, review and
2 forward to the governor all applications along with the
3 committee's recommendations for appointment. The governor
4 shall appoint two persons from each supervisorial district who
5 shall not be of the same political party, subject to
6 confirmation by the senate in the manner prescribed by law.

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

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

16 1. One appointment for a nonattorney member shall be
17 for a one-year term.

18 2. Two appointments for nonattorney members shall be
19 for a two-year term.

20 3. Two appointments for nonattorney members shall be
21 for a three-year term.

22 4. One appointment for an attorney member shall be for
23 a one-year term.

24 5. One appointment for an attorney member shall be for
25 a two-year term.

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

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

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

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

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

20 K. After public hearings the supreme court shall adopt
21 rules of procedure for the commission on trial court
22 appointments.

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

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

31 42. Retention evaluation of justices and judges
32 Section 42. The supreme court shall adopt, after public
33 hearings, and administer for all justices and judges ~~who file~~
34 ~~a declaration to be retained in office,~~ a process, established
35 by court rules for evaluating judicial performance. The rules
36 shall PROVIDE THAT EACH JUSTICE OR JUDGE SHALL BE EVALUATED
37 NOT LESS FREQUENTLY THAN EVERY FOUR YEARS, AND SHALL include
38 written performance standards and performance reviews which
39 survey opinions of persons who have knowledge of the justice's
40 or judge's performance. The public shall be afforded a full
41 and fair opportunity for participation in the evaluation
42 process through public hearings, dissemination of evaluation
43 reports to voters and any other methods as the court deems
44 advisable.

1 Sec. 8. Retroactivity

2 If approved by a majority of the votes cast thereon, this act
3 applies retroactively to from and after October 31, 2024, and the returns
4 of any votes of retention or rejection in the general election held on
5 November 5, 2024 shall not be included in the official canvass or result
6 in the issuance of any certificate of retention or rejection.

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