

ENGROSSED HOUSE
JOINT
RESOLUTION NO. 1028

By: Perry, Askins, Braddock,
Morgan (Fred), Sullivan and
Terrill of the House

and

Laster of the Senate

A Joint Resolution directing the Secretary of State to refer to the people for their approval or rejection proposed amendments to Sections 1, 2, 3, 4, 5 and 6 of Article VII-A of the Constitution of the State of Oklahoma; expanding membership and providing for composition; expanding disciplinary authority of the Court on the Judiciary; defining term; providing ballot title; and directing filing.

SECTION 1. The Secretary of State shall refer to the people for their approval or rejection, as and in the manner provided by law, the following proposed amendments to Sections 1, 2, 3, 4, 5 and 6 of Article VII-A of the Constitution of the State of Oklahoma to read as follows:

Section 1. (a) In addition to other methods and causes prescribed by the Constitution and laws, the judges of any court, exercising judicial power under the provisions of Article VII of the Constitution, or under any other provision~~r~~ of the Constitution of Oklahoma, shall be subject to removal from office, ~~or to~~ compulsory retirement from office, or lesser discipline for causes herein specified, by proceedings in the Court on the Judiciary.

(b) Cause for removal from office shall be: Gross neglect of duty; corruption in office; habitual drunkenness; commission while in office of any offense involving moral turpitude; gross partiality in office; oppression in office; or other grounds as may be specified hereafter by the legislature.

(c) Cause for compulsory retirement from office, with or without compensation, shall be mental or physical disability preventing the proper performance of official duty, or incompetence to perform the duties of the office.

(d) Cause for lesser discipline shall be misconduct, including failure to comply with court rules or violation of the Code of Judicial Conduct, that is not so serious as to warrant removal from office or compulsory retirement.

(e) As used in this section, "lesser discipline" shall include private or public reprimand, suspension or other types of discipline as may be specified hereafter by the Legislature.

Section 2. (a) There is created a Court on the Judiciary, hereinafter referred to as the Court, divided into a Trial Division and an Appellate Division. The Court is vested, subject to the provisions of this Article, with sole and exclusive jurisdiction to hear and determine causes arising thereunder.

(b) ~~The~~ Until March 1 of the year following the adoption of this amendment, the Trial Division shall be composed of nine (9) members, eight (8) of whom shall be the district judges senior in service, but under sixty (60) years of age, with no two (2) from the same Supreme Court Judicial District (in case of equal seniority, the eldest in years to serve), and one (1) active member of the Oklahoma Bar Association, chosen by its ~~Executive Council~~ Board of Governors or other body exercising similar powers. Beginning March 1 of the year following the adoption of this amendment, the Trial Division shall be composed of thirteen (13) members, eight (8) of whom shall be the district judges senior in service, but under sixty (60) years of age, with no two (2) from the same Supreme Court Judicial District (in case of equal seniority, the eldest in years to serve), and one (1) active member of the Oklahoma Bar Association, chosen by its Board of Governors or other body exercising similar powers, and four (4) members who are not members

of the Oklahoma Bar Association, two of whom shall be appointed by the Governor, one of whom shall be appointed by the Speaker of the House of Representatives and one of whom shall be appointed by the President Pro Tempore of the Senate without the advice and consent of the Senate.

(c) The Appellate Division shall be composed of two (2) members of the Supreme Court, chosen by that court; one (1) member of the Court of Criminal Appeals, chosen by that court; one (1) active member of the Oklahoma Bar Association, chosen by its Executive Council or other body exercising similar powers; and five (5) district judges, senior in service but under sixty-five (65) years of age; except that no more than one (1) district judge from any Supreme Court Judicial District shall serve. In the event of equal seniority, the eldest in years shall serve. If any district judge is qualified for both divisions, he shall serve on the Appellate Division and the next in qualification shall serve on the Trial Division.

(d) ~~Within thirty (30) days after the adoption of this amendment, and thereafter prior~~ Prior to the first day in February of each odd-numbered year, the Chief Justice of the Supreme Court, the Presiding Judge of the Court of Criminal Appeals ~~and,~~ the President of the Bar Association, the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate shall certify to the Secretary of State the names of the judges who are chosen, respectively, by the said courts ~~and,~~ by the Oklahoma Bar Association, by the Governor, by the Speaker of the House of Representatives, and by the President Pro Tempore of the Senate. The Secretary of State shall determine the district judges who hold membership on the Trial Division and the Appellate Division. Promptly thereafter ~~he~~ the Secretary of State shall notify the members of the respective divisions to meet at the State

Capitol on a day certain, within thirty (30) days, for purposes of organization and of making or amending rules of procedure.

(e) Members of the courts so designated shall serve until March First of the odd-numbered year next after the year in which they are named. The attainment of the age limit specified shall not terminate their service during the term.

Section 3. (a) Subject to the provisions of this Article, each division of the Court shall select its presiding judge, and shall be judge of the qualifications and the disqualification of its own members and shall make and publish its own rules of procedure. Each division shall meet on call of its presiding judge or three (3) of its members; a majority of the authorized membership of either division of the court shall constitute a quorum for the exercise of any or all of the jurisdiction of that division, regardless of whether or not vacancies exist in the membership of that division.

(b) The Clerk of the Supreme Court shall be the clerk of the court. ~~He~~ The Clerk of the Supreme Court shall perform ~~his~~ duties for the Court under the direction of the Court or of the presiding judges.

(c) In the exercise of its jurisdiction, the Court is vested with full judicial power and authority, including the power to summon witnesses to appear and testify under oath and to compel the production of books, papers, documents, records and other evidential objects; to issue all manner of judicial and remedial process and writs, legal or equitable; to provide for discovery procedures in advance of trial; to make rules governing procedure; to grant full immunity from prosecution or punishment when deemed necessary and proper in order to compel the giving of testimony under oath or the production of books, papers, documents, records or other evidential objects. The specific enumeration of powers herein shall not derogate from the existence of other judicial power and authority in the Court, or from the exercise thereof in aid of its jurisdiction.

(d) All thirteen (13) members of the Trial Division shall preside over proceedings seeking the removal or compulsory retirement of a judge. Proceedings seeking lesser discipline against a judge shall be presided over by a three-member Trial Panel of the Trial Division appointed by the presiding judge of the Trial Division. Each three-member Trial Panel shall consist of two members who are district judges and one member who is not a member of the Oklahoma Bar Association.

Section 4. (a) The jurisdiction of the Trial Division of the Court in proceedings seeking removal or compulsory retirement may be invoked by a petition, filed either by the Supreme Court or the Chief Justice thereof; by the Governor; by the Attorney General; or by the Executive ~~Secretary~~ Director of the Oklahoma Bar Association when directed so to do by a vote of a majority of all members of its ~~Executive Council~~ Board of Governors; or by Resolution of the House of Delegates or by Resolution of the House of Representatives of the State of Oklahoma. The petition shall state the name of the respondent; the grounds upon which ~~his~~ removal from office or compulsory retirement from office is sought; and such other matters as may be specified by the rules of the Trial Division. It shall be subject to amendment by order of either division of the Court.

(b) Immediately upon the filing of the petition provided for in subsection (a) of this section, the Clerk shall notify the presiding officer of the Trial Division, and the respondent named therein, in accordance with the rules of the Trial Division. The presiding judge of the Trial Division shall secure from the ~~Executive Council~~ Board of Governors of the Oklahoma Bar Association a panel of five (5) active members of the Association from which the presiding judge shall designate the prosecutor, and any necessary assistant, to conduct the proceeding against the respondent.

(c) The Trial Division or the presiding judge shall set the matter for hearing, not less than sixty (60) days after notice of

the filing of the petition shall have been given the respondent. In all procedural matters not covered by rule of the Trial Division, the provisions of the Code of Civil Procedure, or of the common law of Oklahoma, shall be followed, so far as they may be applicable.

(d) Pending the determination of the proceedings seeking removal or compulsory retirement, the Trial Division in its discretion may suspend the respondent from ~~the exercise of his~~ office. After full hearing, the Trial Division shall render such judgment as the facts may justify. No judgment pursuant to this subsection shall extend further than: (1) ~~to~~ removal of the respondent from office, with or without disqualification to hold any public office of honor, trust, or profit under this State, or (2) ~~to~~ compulsory retirement from office; but such a proceeding, regardless of result, shall not bar or prejudice any other proceeding, civil or criminal, authorized by law. A judicial officer who is a member of the retirement compensation system prescribed by this Article and is compulsory retired shall receive the retirement compensation to which ~~his~~ the judge is entitled due to term of service entitled him. If ~~he~~ the judge is not qualified for full retirement compensation, ~~he~~ the judge may receive such compensation as the Court may decree, in proportion to time served and in accordance with principles of justice and equity, alike as to amount, commencement of payment, terms of payment, or other relevant conditions or limitations.

(e) The jurisdiction of a Trial Panel in proceedings seeking discipline other than removal or compulsory retirement shall be invoked by a petition filed by the Council on Judicial Complaints. Immediately upon the filing of such a petition by the Council on Judicial Complaints, the clerk shall notify the presiding officer of the Trial Division, who, within ten (10) business days, shall appoint the Trial Panel to preside over the case.

The senior judge on a Trial Panel assigned to hear such a cause shall set the matter for hearing no less than thirty (30) days after

notice of a filing of the petition shall have been given the respondent. The petition and records in such a cause shall remain confidential until such time, if ever, that the Trial Panel imposes discipline greater than a private reprimand.

Counsel for the Council on Judicial Complaints shall prosecute all cases before Trial Panels. The Counsel shall be compensated by the Council.

Section 5. (a) From any judgment of the Trial Division, the respondent or the prosecutor may appeal to the Appellate Division, by filing a notice of appeal with the Clerk of the Supreme Court, within ten days after entry of the judgment. The notice shall be served upon the opposite party in the manner prescribed by the rules of the Appellate Division.

(b) The preparation and certification of the record upon appeal and all proceedings upon the appeal, not prescribed by this action, shall be governed by the rules of the Appellate Division.

(c) The review in the Appellate Division shall be an equity appeal, as to both law and fact. The Appellate Division may affirm, modify or reverse the judgment of the Trial Division, or enter a new judgment, as justice may require.

(d) If justice requires, the Appellate Division may hear additional evidence upon the appeal, upon a showing to the satisfaction of the Division that the additional evidence is material and that there were good reasons for failure to present it to the Trial Division.

(e) Appeals from proceedings seeking removal or compulsory retirement shall be reviewed by the full Appellate Division.

(f) Appeals from proceedings seeking lesser discipline shall be reviewed by a Panel of the Appellate Division. The Panel shall consist of three (3) members of the Appellate Division assigned to review the appeal by the Presiding Judge of the Division.

Section 6. (a) In all proceedings before the Court the established rules for disqualification of judges for interest, prejudice or partiality shall apply. No district judge shall sit in a matter in which the respondent is a judge of a court within his district court judicial district. In the event of the disqualification or failure to act of a member of the Court, a judge pro tem to sit in his place shall be named by the authority appointing him, if he is a district judge, the qualified district judge from his Supreme Court judicial district, next in seniority, shall serve as judge pro tem.

(b) Members of the Court shall serve without compensation, but shall receive the allowance for expense permitted district judges serving outside their districts.

(c) The prosecutors in proceedings seeking removal from office or compulsory retirement shall receive such fair and just compensation as the respective division of the Court shall award for service before that division.

(d) The Legislature shall appropriate such sums as may be necessary to carry out the provisions of this Article.

SECTION 2. The Ballot Title for the proposed Constitutional amendments as set forth in SECTION 1 of this resolution shall be in the following form:

BALLOT TITLE

Legislative Referendum No. _____ State Question No. _____

THE GIST OF THE PROPOSITION IS AS FOLLOWS:

This measure would amend the Oklahoma Constitution. The measure deals with the Court on the Judiciary. This is the group that decides if a judge should be removed from office. This measure would add members to the Court. The members would not be lawyers. In addition, this measure would give more powers to the Court. Under current law, the Court can only take two actions. It may either remove a judge from office or make the

judge retire. The amendment would increase the types of actions the Court can take. If the amendment passes, the Court would be able to suspend a judge and issue reprimands. The Court would still be able to remove a judge from office or make the judge retire.

SHALL THE PROPOSAL BE APPROVED?

FOR THE PROPOSAL - YES _____

AGAINST THE PROPOSAL - NO _____

SECTION 3. The Chief Clerk of the House of Representatives, immediately after the passage of this resolution, shall prepare and file one copy thereof, including the Ballot Title set forth in SECTION 2 hereof, with the Secretary of State and one copy with the Attorney General.

Passed the House of Representatives the 14th day of March, 2006.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2006.

Presiding Officer of the Senate