PROPOSED CONSTITUTIONAL AMENDMENTS—COMMISSION ON JUDICIAL CONDUCT

S. J. R. No. 30

Proposing an amendment to the Texas Constitution changing the name of the State Judicial Qualifications Commission to the State Commission on Judicial Conduct, and relating to the commission and the powers and proceedings of the commission, a master, and the supreme court, or court of civil appeals justices serving in place of the supreme court, for the suspension, censure, removal, or involuntary retirement of a justice, judge, or justice of the peace under certain circumstances.

Be it resolved by the Legislature of the State of Texas:

Section 1. That Subsections (2), (5), (7), (8), (9), (10), and (12) and Paragraph A of Subsection (6), Section 1-a, Article V of the Texas Constitution, be amended to read as follows:

"(2) The name of the State Judicial Qualifications Commission is changed to the State Commission on Judicial Conduct. The Commission consists of eleven (11) members, to wit: (i) two (2) Justices of Courts of Civil Appeals; (ii) two (2) District Judges; (iii) two (2) members of the State Bar, who have respectively practiced as such for over ten (10) consecutive years next preceding their selection; (iiii) four (4) citizens, at least thirty (30) years of age, not licensed to practice law nor holding any salaried public office or employment; and (v) one (1) Justice of the Peace; provided that no person shall be or remain a member of the Commission, who does not maintain physical residence within this State, or who resides in, or holds a judgeship within or for, the same Supreme Judicial District as another member of the Commission, or who shall have ceased to retain the qualifications above specified for his respective class of membership, except that the Justice of the Peace shall be selected at large without regard to whether he resides or holds a judgeship in the same Supreme Judicial District as another member of the Commission. Commissioners of classes (i) and (ii) above shall be chosen by the Supreme Court with advice and consent of the Senate, those of class (iii) by the Board of Directors of the State Bar under regulations to be prescribed by the Supreme Court with advice and consent of the Senate, those of class (iiii) by appointment of the Governor with advice and consent of the Senate, and the commissioner of class (v) by appointment of the Supreme Court from a list of five (5) names submitted by the executive committee of the Justice of the Peace and Constables Association of Texas, with the advice and consent of the Senate. The initial term of the commissioner of class (v) and the fourth commissioner of class (iiii) added by this amendment terminates on November 19, 1979. Each person holding office as a member of the Commission on the effective date of this amendment continues to hold the office for the term for which he was appointed."

"(5) The Commission may hold its meetings, hearings and other proceedings at such times and places as it shall determine but shall meet at Austin at least once each year. It shall annually select one of its members as Chairman. A quorum shall consist of six (6) members. Proceedings shall be by majority vote of those present, except that recommendations for retirement, censure, suspension, or removal of any person holding an of-

fice named in Paragraph A of Subsection (6) of this Section shall be by affirmative vote of at least six (6) members.

"(6)A. Any Justice or Judge of the Appellate Courts and District and Criminal District Courts, and any County Judge, and any Judge of a County Court at Law, a Court of Domestic Relations, a Juvenile Court, a Probate Court, or a Corporation or Municipal Court, and any Justice of the Peace, and any Judge or presiding officer of any special court created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent conduct, which is clearly inconsistent with the proper performance of his said duties or casts public discredit upon the judiciary or administration of justice; or any person holding such office may be censured, in lieu of removal from office, under procedures provided for by the Legislature. Any person holding an office named in this subsection may be suspended from office with or without pay by the Commission immediately on being indicted by a State or Federal grand jury for a felony offense; or, on the filing of a sworn complaint charging a person holding such office with willful and persistent conduct which is clearly inconsistent with the proper performance of his duties or which casts public discredit on the judiciary or on the administration of justice, the Commission, after giving the person notice and an opportunity to appear before the Commission, may recommend to the Supreme Court the suspension of such person from office. The Supreme Court, after considering the record of such appearance and the recommendation of the Commission, may suspend the person from office with or without pay, pending final disposition of the charge.

"(7) The Commission shall keep itself informed as fully as may be of circumstances relating to the misconduct or disability of particular persons holding an office named in Paragraph A of Subsection (6) of this Section, receive complaints or reports, formal or informal, from any source in this behalf and make such preliminary investigations as it may determine. Its orders for the attendance or testimony of witnesses or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings in the District Court or by a Master.

"(8) After such investigation as it deems necessary, the Commission may in its discretion issue a private or public reprimand, or if the Commission determines that the situation merits such action, it may institute formal proceedings and order a formal hearing to be held before it concerning the public censure, removal, or retirement of a person holding an office named in Paragraph A of Subsection (6) of this Section, or it may in its discretion request the Supreme Court to appoint an active or retired District Judge or Justice of a Court of Civil Appeals, or retired Judge or Justice of the Court of Criminal Appeals or the Supreme Court, as a Master to hear and take evidence in any such matter, and to report thereon to the Commission. The Master shall have all the power of a District Judge in the enforcement of orders pertaining to witnesses, evidence, and procedure. If, after formal hearing, or after considering the record and report of a Master, the Commission finds good cause therefor, it shall issue an order of public censure or it shall recommend to the Supreme Court the removal, or retirement, as the case may be, of the person in question holding an office named in Paragraph A of Subsection (6) of this Section and shall thereupon file with the Clerk of the Supreme Court the entire record before the Commission.

"(9) The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may, for good cause shown, permit the introduction of additional evidence and shall order public censure, retirement or removal, as it finds just and proper, or wholly reject the recommendation. Upon an order for involuntary retirement for disability or an order for removal, the office in question shall become vacant. The Supreme Court, in an order for involuntary retirement for disability or an order for removal, may prohibit such person from holding judicial office in the future. The rights of an incumbent so retired to retirement benefits shall be the same as if his retirement had been voluntary.

"(10) All papers filed with and proceedings before the Commission or a Master shall be confidential, unless otherwise provided by law, and the filing of papers with, and the giving of testimony before, the Commission, Master or the Supreme Court shall be privileged, unless otherwise provided by law; provided that upon being filed in the Supreme Court the record loses its confidential character. However, the Commission may issue a public statement through its executive director or its Chairman at any time during any of its proceedings under this Section when sources other than the Commission cause notoriety concerning a Judge or the Commission itself and the Commission determines that the best interests of a Judge or of the public will be served by issuing the statement."

"(12) No person holding an office named in Paragraph A of Subsection (6) of this Section shall sit as a member of the Commission in any proceeding involving his own suspension, censure, retirement or removal. A recommendation of the Commission for the suspension, censure, retirement, or removal of a Justice of the Supreme Court shall be determined by a tribunal of seven (7) Court of Civil Appeals Justices selected by lot to serve in place of the Supreme Court."

Sec. 2. The foregoing constitutional amendment shall be submitted to a vote of the qualified electors of this state at an election to be held on the first Tuesday after the first Monday in November, 1977, at which election the ballots shall be printed to provide for voting for or against the proposition: "The constitutional amendment changing the name of the State Judicial Qualifications Commission to the State Commission on Judicial Conduct, and relating to the commission and the powers and proceedings of the commission, a master, and the supreme court, or court of civil appeals justices serving in place of the supreme court, for the suspension, censure, removal, or involuntary retirement of a justice, judge, or justice of the peace under certain circumstances."

Adopted by the senate on February 28, 1977: Yeas 21, Nays 8; May 25, 1977, senate concurred in house amendments: Yeas 29, Nays 0; adopted by the house, with amendments, on May 24, 1977: Yeas 129, Nays 3, one present not voting.

Filed without signature.

Filed with the Secretary of State, May 26, 1977.