

# White Paper: Judicial Selection in South Carolina

By Laird Minor

## I. Introduction

This paper describes the method by which judges are currently appointed in South Carolina; addresses the weaknesses and defects in that system and argues for its replacement; describes alternative judicial appointment methods and discusses their relative merits; and offers draft legislation for a proposed constitutional amendment to replace the current system.

## II. Current Method of Judicial Appointment

Since 1985, the South Carolina Constitution<sup>1</sup> has provided that Supreme Court justices and judges of the state's Appellate and Circuit Courts (collectively herein referred to as "judges") be appointed by majority vote of the General Assembly. All judges serve for limited terms of office, specified in the Constitution: Supreme Court justices serve for ten-year terms and other judges serve for six-year terms. The Constitution also provides for the creation, by statute, of a Judicial Merit Selection Commission (the "Commission"), and specifies that no person can be appointed to a judgeship who has not been rated as "qualified" by the Commission. Relevant extracts from Article V of the Constitution are attached hereto in Appendix A.

State law<sup>2</sup> provides that the Commission consists of ten members, appointed as follows:

- (a) five members appointed by the Speaker of the House of Representatives, of which three must be serving members of the General Assembly and two must be members of the general public; and
- (b) three members appointed by the Chairman of the Senate Judiciary Committee and two members appointed by the Speaker Pro Tempore of the Senate, of which group three must be serving members of the General Assembly and two must be members of the general public.

Clearly, in this state the judicial selection process is completely controlled by the Legislature, which appoints all judges without input from either the Governor or the public. Furthermore, as a practical matter the selection process is dominated by three specific individuals: the Speaker of the House, the President *Pro Tempore* of the Senate and the Chairman of the Senate Judiciary Committee. It is the opinion of the author of this paper that not only does this process vest far too much power in the Legislature (and especially in those three individuals), but that it unnecessarily politicizes the state's judiciary and creates both conflicts of interest for the Members and ethical dilemmas for the judges.

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<sup>1</sup> SC Constitution, Article V.

<sup>2</sup> SC Code of Laws §2-19-10.

To the extent possible, the judiciary should be independent and as free from political influence as is practicable. That is impossible under the current system. A better selection method is needed.

### **III. Possible Selection Methods**

Within the United States there are in use three general methods of judicial selection<sup>3</sup>: (i) legislative appointment (the method currently used in South Carolina); (ii) executive appointment, generally by the governor with legislative approval; and (iii) popular vote (in either partisan or non-partisan elections). A hybrid method is the use of retention elections, whereby the judge is originally appointed in some fashion (generally by the governor) but is thereafter subject to periodic popular vote to retain his seat. Each of these methods has benefits and drawbacks, which are explored in the following section.

It is not necessary that the same method be used to select all of the judges within a state; one method can be used for the appointment of Supreme Court justices and a different one for lower court judges. Many states use different methods for different courts.

### **IV. Advantages and Disadvantages of the Different Judicial Selection Methods**

**(A) Legislative Appointment.** It is difficult to identify any benefits to our current judicial appointment system, which perhaps is why it is used by only one other state in the country (Virginia).<sup>4</sup> Political interference with the judiciary is endemic in this system. In a state with a part-time legislature, where the legislators are paid a fairly nominal salary, all but those who are retired or independently wealthy must necessarily pursue other vocations. Unsurprisingly, a large number are practicing attorneys, many of whom regularly appear before the state courts. For the judges who preside over those courts to be beholden to the very legislators who will be appearing before them presents a severe ethical dilemma, and unnecessarily puts those judges into a compromised position which is inherently unfair to other litigants. For the legislators who will be appearing in the state's courts to be in the position of appointing the judges presiding over those courts presents them with an obvious and inescapable conflict of interest. The process necessarily erodes public confidence in the impartial administration of justice.

Furthermore, under this system responsibility for the appointment of unqualified, incompetent or corrupt judges is diffused; there is no one person who can legitimately be held accountable for bad appointments. This feature may be attractive to politicians, but it is certainly not in the interest of the citizens of this state.

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<sup>3</sup> The American Bar Association has prepared a useful report (the "ABA Report") on the history and methods of judicial selection in the various states. See, [https://www.americanbar.org/content/dam/aba/migrated/JusticeCenter/Justice/PublicDocuments/judicial\\_selection\\_roadmap\\_authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/migrated/JusticeCenter/Justice/PublicDocuments/judicial_selection_roadmap_authcheckdam.pdf). In addition, the National Center for State Courts has prepared a comprehensive description of the current judicial appointment and retention practices in each of the states (the "NCSC Report"). See, <http://www.judicialselection.us/>.

<sup>4</sup> See the ABA Report, *supra*.

This system has no apparent redeeming qualities.

**(B) Executive Appointment.** This method, employed by a majority of the states (as well as by the federal government), generally empowers the governor to appoint judges subject to approval by one or both houses of the legislature. This approach minimizes (although it does not eliminate) political influence on the selection process, especially when it is coupled with some form of merit selection commission (discussed below). The governor is directly accountable to the people, and a history of poor judicial appointments would become a campaign issue for any political opponent. Also, the governor is more able to focus attention on these selections, which are relatively infrequent, than is a body of part-time legislators whose primary focus is on crafting and enacting legislation. Judicial appointments are a minor after-thought for most legislators; in contrast, they would be an area of significant importance to a governor who is personally responsible for the results. Finally, the governor is in office full-time and all year long, whereas the legislature sits for only a small portion of the year, and even then it is part-time. A governor is far better situated to fill judicial vacancies promptly as they arise, even if those appointments are provisional until the legislature is once again in session and able to act on them.

One downside to the executive appointment of judges is that the governor is at least as susceptible to political pressure over appointments as is the legislature, and probably even more so since all the pressure can be directed toward that one specific person. This problem can be minimized by the use of a merit selection commission, provided that the governor is limited to selecting appointees from the approved list prepared by that commission. A second drawback is that should there arise a dispute between the governor and the legislature, ratification of the governor's judicial appointments could be significantly delayed and vacancies could build up, hampering the efficiency of the court system. Indeed, we see this problem at the federal level, especially with regard to Supreme Court appointments. Again, however, this problem could be mitigated by the use of an independent merit selection commission (something which does not exist at the federal level), which should render most judicial nominations relatively non-controversial.

**(C) Popular Election.** This can take one of two forms: partisan and nonpartisan elections. Partisan elections would sift most prospective judicial candidates through the filter of the political parties, thus providing at least some means, however imperfect, of "vetting" such candidates. That process would not exist in nonpartisan elections, in which any prospective candidate merely needs to file with the relevant election commission.

The one clear benefit of electing judges is that it demonstrates unquestionably that judges are answerable to the people, not to special interests, party bosses or any political machine.

Nonetheless, there are significant drawbacks to judicial elections. First, this system requires that any prospective judge subject himself to the vicissitudes and indignities of the election process. This means assembling a campaign committee, raising campaign contributions, appearing before various groups to solicit votes, and spending significant amounts of time on the "campaign trail". These issues assume

even greater importance when the position sought covers a large geographic area (appellate court judges), and especially when it involves the entire state (Supreme Court justices). It is highly unlikely that the most qualified and best suited candidates (who, ideally, would be individuals having significant experience in the practice of law, possibly with some academic experience added in) would subject themselves to this process. Indeed, the process seems designed to attract the *least* qualified candidates, not the best.

Nearly all campaign contributions in judicial elections come from those who have a direct pecuniary interest in the outcome: the lawyers who practice in those courts. The end result is that in states with judicial elections the process is dominated by the trial lawyers and their professional associations. Nearly all judges come from among their ranks, and all have unspoken obligations to those responsible for their position. These courts become noticeably skewed in favor of the plaintiffs' bar, and the even-handed administration of justice (and thus the reputation of the state itself) suffers as a result.

Finally, and perhaps most important, the general public has no means of forming a reasoned judgment as to the relative merits of judicial candidates. The average elector knows little or nothing of the qualities which a good judge should possess, or even what constitutes appropriate "judicial temperament". The general public simply has no rational basis for evaluating or choosing judges. If they give it any thought at all, electors might rely on the recommendations of persons of authority (other judges, the state Bar Association, political leaders, etc.). But as a practical matter, if the elections are partisan most people will simply vote for the candidate bearing the imprimatur of their preferred political party, and if they are nonpartisan for most people the choice is simply an uneducated guess: which candidate has a familiar name or is the most photogenic.

Many of the defects inherent in judicial elections also apply to judicial *retention* elections. Most people pay little attention to judges anyway, so retention elections tend to be mere rubber stamps of the incumbent since there isn't even an opponent to spark thought about the candidate. The only exception to this is where a specific judge has been responsible for a decision which sparked popular outrage, or aroused the ire of a vocal special-interest group which makes removal of that judge its objective. However, popular opinion (or the desires of advocacy groups) is not necessarily the best, or even an appropriate, measure of judicial competence. Judges are required to enforce the laws and adhere to the Constitution, and the results are not always popular. The specter of an impending election should have no bearing on judicial decisions, but that result is inevitable in judicial retention election states.

## V. Merit Selection

Many states use some form of merit selection panel to screen prospective judicial candidates. The proper purpose of a merit selection commission is not merely to ensure the competence and suitability of judicial nominees, but also to help insulate the selection process (and the judges themselves) from political influence. To be effective and maintain the confidence of the people such a commission must enjoy a significant degree of independence.

The process currently used in South Carolina does none of this; it provides the *fiction* of a merit selection process but not the reality. The Judicial Merit Selection Commission is entirely the creature of the legislature: not only are all ten of its members selected by three specified members of the General Assembly, but six of those Commission members are required to be *sitting* legislators. This structure ensures that judicial nominees will be acceptable to the current political power structure, and that all judges are beholden to the political leadership, but nothing more. The system is rife with opportunities for cronyism and political favoritism, and it institutionalizes conflicts of interest.

Most states which employ some form of merit selection commission attempt to give it at least a measure of independence. Its members are generally selected by a variety of different persons or entities, such as the governor, other elected officials, and the state bar association. Such commissions frequently include individuals holding specific positions, such as the Chief Justice of the state's Supreme Court, law school deans, and the state Attorney General. Most also seek to involve as many different segments of the public as possible, seeking broad diversity in membership which includes both lawyers and laymen.

The American Bar Association recommends that every state employ some form of merit selection process, which it argues "encourages community involvement in judicial selection, limits the role of political favoritism, and ensures that judges are well qualified to occupy positions of public trust."<sup>5</sup> It views such a process as striking an appropriate balance between preserving judicial independence and providing public accountability.

## **VI. Conclusion and Recommendation**

Every judicial selection process possesses inherent strengths and weaknesses; none is perfect. Moreover, no system can completely eliminate political influence on the process. At best, such influence can be minimized by employing a broad-based nomination methodology which diffuses the effects of politics. Clearly, that does *not* describe South Carolina's current system, which is arguably the worst possible method of selecting judges. It is the author's contention that this system needs radical change, which will require amendment of the state Constitution. That can only be accomplished by a Joint Resolution of the General Assembly, passed by two-thirds majorities in both Houses,<sup>6</sup> calling for a public referendum on the proposed amendment

Accordingly, it is here proposed is that the state Constitution be amended to provide for the appointment of all state court judges, at every level, by action of the governor with the consent of majorities in both houses of the General Assembly. Nominations could only be made from a list of qualified candidates provided by a new Judicial Screening Commission. That commission would be comprised of members appointed by the governor, the General Assembly, and the state Bar Association, and would automatically include the Chief Justice of the Supreme Court, the Attorney General (or his designee), and the Dean of the state's largest law school (or his

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<sup>5</sup> See the ABA Report, *supra* note 3, at 7.

<sup>6</sup> SC Constitution, Article XVI, Section 1..

designee). It would include both lawyers and non-lawyers, but would be *prohibited* from including any sitting member of the General Assembly, anyone who has served in the General Assembly at any time within the previous ten years, or any of their business associates or immediate family members. Other qualifications for membership in this new commission, their terms of office, its operating procedures, etc., would be established by implementing legislation.

There may be merit in establishing a separate Judicial Qualifications Commission, independent of the Judicial Screening Commission, to establish the standards, qualifications and qualities deemed necessary or desirable in judges. The Joint Resolution hereby proposed includes authorization, but not the requirement, for the establishment of such a commission on such terms as the General Assembly may deem appropriate. If such a qualifications commission should be established and issue one or more sets of judicial standards, the Judicial Screening Commission would be obligated to follow them in determining the qualification of any judicial candidate.

The proposed text of a Joint Resolution implementing the foregoing is attached as Appendix B.

## Appendix A

### Extracts from the South Carolina Constitution Relating to Judicial Appointments

#### ARTICLE V THE JUDICIAL DEPARTMENT

##### **SECTION 3.** Election of members of Supreme Court.

The members of the Supreme Court shall be elected by a joint public vote of the General Assembly for a term of ten years, and shall continue in office until their successors shall be elected and qualified, and shall be classified so that the term of one of them shall expire every two years. In any contested election, the vote of each member of the General Assembly present and voting shall be recorded.

##### **SECTION 8.** Election of members of Court of Appeals.

The members of the Court of Appeals shall be elected by a joint public vote of the General Assembly for a term of six years and shall continue in office until their successors shall be elected and qualify. In any contested election, the vote of each member of the General Assembly present and voting shall be recorded. Provided, that for the first election of members of the Court of Appeals, the General Assembly shall by law provide for staggered terms.

##### **SECTION 13.** Judicial circuits.

The General Assembly shall divide the State into judicial circuits of compact and contiguous territory. For each circuit a judge or judges shall be elected by a joint public vote of the General Assembly; provided, that in any contested election, the vote of each member of the General Assembly present and voting shall be recorded. He shall hold office for a term of six years, and at the time of his election he shall be an elector of a county of, and during his continuance in office he shall reside in, the circuit of which he is judge. The General Assembly may by law provide for additional circuit judges, to be assigned by the Chief Justice. Such additional circuit judges shall be elected in the same manner and for the same term as provided in the preceding paragraph of this section for other circuit judges, except that residence in a particular county or circuit shall not be a qualification for office.

##### **SECTION 27.** Judicial Merit Selection Commission.

In addition to the qualifications for circuit court and court of appeals judges and Supreme Court justices contained in this article, the General Assembly by law shall establish a Judicial Merit Selection Commission to consider the qualifications and fitness of candidates for all judicial positions on these courts and on other courts of this State which are filled by election of the General Assembly. The General Assembly must elect the judges and justices from among the nominees of the commission to fill a vacancy on these courts.

No person may be elected to these judicial positions unless he or she has been found qualified by the commission. Before a sitting member of the General Assembly may submit an application with the commission for his nomination to a judicial office, and before the commission may accept or consider such an application, the member of the General Assembly must first resign his office and have been out of office for a period established by law. Before a member of the commission may submit an application with the commission for his nomination to a judicial office, and before the commission may accept or consider such an application, the member of the commission must not have been a member of the commission for a period to be established by law.

**Appendix B**  
**Proposed Joint Resolution**

**[Text follows]**



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## A JOINT RESOLUTION

TO AMEND SECTION 3, ARTICLE V OF THE CONSTITUTION OF THIS STATE, RELATING TO SUPREME COURT JUSTICES, SECTION 8, ARTICLE V, RELATING TO JUDGES OF THE COURT OF APPEALS, SECTION 13, ARTICLE V, RELATING TO JUDICIAL CIRCUITS AND CIRCUIT COURT JUDGES, AND SECTION 18, ARTICLE V, RELATING TO VACANCIES IN THESE JUDICIAL OFFICES, SO AS TO PROVIDE THAT SUPREME COURT JUSTICES, JUDGES OF THE COURT OF APPEALS, AND CIRCUIT COURT JUDGES, SHALL BE APPOINTED BY THE GOVERNOR UPON THE APPROVAL OF THE GENERAL ASSEMBLY BY A ROLL CALL VOTE IN EACH HOUSE RATHER THAN BE ELECTED BY THE GENERAL ASSEMBLY; TO AMEND SECTION 27, ARTICLE V, TO ABOLISH THE JUDICIAL MERIT SELECTION COMMISSION, TO REQUIRE THAT THE GENERAL ASSEMBLY ESTABLISH A NEW JUDICIAL SCREENING COMMISSION AND ESTABLISHING THAT COMMISSION’S MEMBERSHIP CRITERIA, AND TO AUTHORIZE THE CREATION OF A JUDICIAL STANDARDS COMMISSION; AND TO ADD SECTION 28 TO ARTICLE V SO AS TO PROVIDE THAT FAMILY COURT JUDGES PROVIDED FOR BY GENERAL LAW MUST BE APPOINTED BY THE GOVERNOR UPON THE APPROVAL OF THE GENERAL ASSEMBLY BY A ROLL CALL VOTE IN EACH HOUSE.

Be it enacted by the General Assembly of the State of South Carolina:

### SECTION 1.

A. It is proposed that Section 3, Article V of the Constitution be amended to read:

~~“Section 3. The members of the Supreme Court shall be elected by a joint public vote of the General Assembly appointed by the Governor, upon the approval of the General Assembly by a roll call vote in each house, for a term of ten years, and shall continue in office until their successors shall be elected and qualified appointed and confirmed, and shall be classified so that the term of one of them shall expire every two years. In any contested election, the vote of each member of the General Assembly present and voting shall be recorded.~~

“The provisions of this section providing for the appointment of Supreme Court Justices by the Governor, upon the approval of the General Assembly by a roll call vote in each house, shall apply beginning with the expiration of the individual terms of current Supreme Court Justices who have been elected by the General Assembly.”

B. It is proposed that Section 8, Article V of the Constitution be amended to read:

1       “Section 8. The members of the Court of Appeals shall be ~~elected by a joint public vote of the~~  
2 ~~General Assembly appointed by the Governor upon the approval of the General Assembly by a~~  
3 ~~roll call vote in each house~~ for a term of six years, and shall continue in office until their  
4 successors shall be ~~elected and qualify~~ appointed and confirmed. ~~In any contested election, the~~  
5 ~~vote of each member of the General Assembly present and voting shall be recorded. Provided,~~  
6 ~~that for the first election of members of the Court of Appeals, the General Assembly shall by law~~  
7 ~~provide for staggered terms.~~

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9       “The provisions of this section providing for the appointment of Court of Appeals Judges by  
10 the Governor, upon the approval of the General Assembly by a roll call vote in each house, shall  
11 apply beginning with the expiration of the individual terms of current Court of Appeals Judges  
12 who have been elected by the General Assembly.”

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14 C.       It is proposed that Section 13, Article V of the Constitution be amended to read:

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16       “Section 13. The General Assembly shall divide the State into judicial circuits of compact and  
17 contiguous territory. For each circuit a judge or judges shall be ~~elected by a joint public vote of~~  
18 ~~the General Assembly; provided, that in any contested election, the vote of each member of the~~  
19 ~~General Assembly present and voting shall be recorded. He~~ appointed by the Governor, upon the  
20 approval of the General Assembly by a roll call vote in each house. A circuit judge shall hold  
21 office for a term of six years, and at the time of his ~~election~~ appointment he shall be an elector of  
22 a county of, and during his continuance in office he shall reside in, the circuit of which he is  
23 judge.

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25       “The General Assembly may by law provide for additional circuit judges, to be assigned by  
26 the Chief Justice. Such additional circuit judges shall be ~~elected~~ appointed in the same manner  
27 and for the same term as provided in the preceding paragraph of this section for other circuit  
28 judges, except that residence in a particular county or circuit shall not be a qualification for  
29 office.

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31       “The provisions of this section providing for the appointment of circuit judges by the  
32 Governor, upon the approval of the General Assembly by a roll call vote in each house, shall  
33 apply beginning with the expiration of the individual terms of current circuit judges who have  
34 been elected by the General Assembly.”

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36 D.       It is proposed that Section 18, Article V of the Constitution be amended to read:

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38       “Section 18. All vacancies in the Supreme Court, Court of Appeals, or Circuit Court shall be  
39 filled by ~~elections as prescribed in Sections 3, 8, and 13 of this article; provided, that if the~~  
40 ~~unexpired term does not exceed one year such vacancy may be filled by the Governor upon the~~  
41 ~~approval of the General Assembly by a roll call vote in each house; provided, that any such~~  
42 ~~vacancy which occurs while the General Assembly is in recess shall be filled by appointment by~~  
43 ~~the Governor on an interim basis, such person to serve only until a date thirty days after the next~~  
44 ~~legislative session shall have convened unless the General Assembly, by roll call vote in each~~  
45 ~~house, shall sooner have confirmed the appointment. When a vacancy is filled by either~~

1 ~~appointment or election~~, the incumbent shall hold office only for the unexpired term of his  
2 predecessor.”

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4 E. It is proposed that Section 27, Article V of the Constitution, relating to the Judicial Merit  
5 Selection  
6 Commission, be amended to read:

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8 “Section 27. In addition to the qualifications for circuit court and court of appeals judges and  
9 Supreme Court justices contained in this article, the General Assembly by law shall establish a  
10 ~~Judicial Merit Selection~~ Screening Commission to consider the qualifications and fitness of  
11 candidates for all judicial positions on these courts and on other courts of this State which are  
12 filled by ~~election of the General Assembly~~ appointment of the Governor upon the approval of the  
13 General Assembly. The Governor may nominate, and the General Assembly must elect may  
14 approve, ~~the~~ as judges and justices ~~from among the nominees of the commission to fill a vacancy~~  
15 ~~on these courts~~.

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17 ~~—No person may be elected to these judicial positions unless he or she~~ only those persons whom  
18 the commission has been found to be qualified ~~by the commission~~.

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20 “The Judicial Screening Commission shall consist of thirteen members selected as follows:

- 21 (a) Four members appointed by the Governor;  
22 (b) One member appointed by each of the President Pro Tempore of the Senate, the Chairman  
23 of the Senate Judiciary Committee, and the Speaker of the House of Representatives;  
24 (c) Three members appointed by the Board of Governors of the South Carolina Bar Association  
25 or any successor entity;  
26 (d) The Chief Justice of the Supreme Court, who shall serve as Chairman of the commission;  
27 (e) The Attorney General or his designee; and  
28 (f) The Dean of the largest law school within the State of South Carolina, or his designee.

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30 “No member of the Judicial Screening Commission may currently be serving as a member of  
31 the General Assembly, or have served as a member of the General Assembly at any time within  
32 the preceding ten years, or be a current business associate of any such person or a member of his  
33 immediate family. Any member of the commission who subsequently becomes disqualified  
34 pursuant to the preceding sentence shall resign immediately, and the vacancy thus created will be  
35 filled by appointment by the appropriate person or body listed above.

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37 ~~“Before a sitting member of the General Assembly may submit an application with the~~  
38 ~~commission for his nomination~~ be appointed to a judicial office, and before the commission may  
39 ~~accept or~~ consider such an application, the member of the General Assembly must first resign his  
40 office and have been out of office for a period to be established by law. Before a member of the  
41 commission may ~~submit an application with the commission for his nomination~~ be appointed to a  
42 judicial office, and before the commission may ~~accept or~~ consider such an ~~application~~  
43 appointment, the member of the commission must not have been a member of the commission  
44 for a period to be established by law.

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1 “In addition to the Judicial Screening Commission, the General Assembly may by law  
2 establish a Judicial Standards Commission, comprised of such members, and having such terms,  
3 as the General Assembly may determine and meeting as frequently as the General Assembly  
4 shall specify, for the purpose of establishing the standards, qualifications and personal qualities  
5 which the state deems necessary or desirable in a judge or justice. If such commission shall be  
6 established and thereafter promulgate such judicial standards, the Judicial Screening  
7 Commission shall apply such standards in determining the qualification of all judicial  
8 candidates.”  
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10 F. It is proposed that Article V of the Constitution of this State be amended by adding:  
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12 “Section 28. Upon the expiration of the current terms of any Family Court judges provided for  
13 by general law who are serving in office on the effective date of this section, their successors  
14 must be appointed by the Governor upon the approval of the General Assembly by a roll call  
15 vote in each house.”  
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17 SECTION 2. The proposed amendments in Section 1 must be submitted to the qualified electors  
18 at the next general election for representatives. Ballots must be provided at the various voting  
19 precincts with the following words printed or written on the ballot:  
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21 “Must Article V of the 1895 Constitution, relating to the Judicial Department, be amended to  
22 provide that Supreme Court Justices, judges on the Court of Appeals and Circuit Court judges  
23 must be appointed by the Governor upon the approval of the General Assembly by a roll call  
24 vote in each house; and must a new Section 28 to Article V be added so as to provide that Family  
25 Court judges provided for by general law must be appointed by the Governor upon the approval  
26 of the General Assembly by a roll call vote in each house; and must all persons nominated for  
27 judgeships be found qualified by the Judicial Screening Commission?”  
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29 Yes

30 No

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33 Those voting in favor of the question shall deposit a ballot with a check or cross mark in the  
34 square after the word ‘Yes’ and those voting against the question shall deposit a ballot with a  
35 check or cross mark in the square after the word ‘No’.”  
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