

By: Representative Robertson

To: Constitution

HOUSE CONCURRENT RESOLUTION NO. 3

1 A CONCURRENT RESOLUTION PROPOSING TO AMEND THE MISSISSIPPI
2 CONSTITUTION OF 1890 BY CREATING A NEW SECTION 131-A TO PROVIDE A
3 PROCEDURE BY WHICH THE SUPREME COURT, UPON RESOLUTION ADOPTED BY
4 THE LEGISLATURE, MAY DETERMINE WHETHER THE GOVERNOR OR ANY OTHER
5 STATEWIDE ELECTED OFFICIAL, AS A RESULT OF SICKNESS, INJURY OR ANY
6 OTHER PHYSICAL OR MENTAL DISABILITY OR IMPAIRMENT, IS COMPETENT TO
7 PROPERLY DISCHARGE THE POWERS AND DUTIES OF HIS OR HER OFFICE; TO
8 AMEND SECTION 131, MISSISSIPPI CONSTITUTION OF 1890, IN CONFORMITY
9 WITH THE PROVISIONS OF THIS RESOLUTION; AND FOR RELATED PURPOSES.

10 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF
11 MISSISSIPPI, That the following amendments to the Mississippi
12 Constitution of 1890 are proposed to the qualified electors of the
13 state:

14 I.

15 Amend the Mississippi Constitution of 1890, by creating a new
16 section to read as follows:

17 "Section 131-A. (1) If the Governor or any other statewide
18 elected official, as a result of sickness, injury or any other
19 physical or mental disability or impairment, appears to be
20 incompetent to properly discharge the powers and duties of his or
21 her office, the Legislature, by concurrent resolution adopted by
22 not less than a majority of the elected membership of each house,
23 may direct the Supreme Court to determine the issue. If the
24 Legislature is not in session at the time the issue of competency
25 arises, then the Legislature may be convened in special session
26 for such purpose, and for such purpose only, by joint proclamation
27 of the Lieutenant Governor and the Speaker of the House, or by
28 joint proclamation of the President Pro Tempore of the Senate and
29 the Speaker of the House if the official whose competency is at
30 issue is the Lieutenant Governor.



31 (2) Upon adoption of a concurrent resolution by the
32 Legislature as provided in subsection (1) of this section, the
33 resolution shall be transmitted immediately to the Supreme Court.
34 A copy of the resolution shall also be served upon the official.
35 Within forty-eight (48) hours of receipt of the resolution, the
36 Supreme Court, by not less than a majority of its members, shall
37 appoint a commission consisting of an internist, a neurologist, a
38 neurosurgeon, a psychiatrist and a surgeon. The membership of the
39 commission shall be selected by the Supreme Court from among a
40 list of persons qualified and licensed to practice medicine in the
41 State of Mississippi submitted to the court by the state agency or
42 board that licenses and regulates physicians. The commission
43 shall select a chairman from among its membership.

44 (3) Immediately upon receipt of the concurrent resolution
45 from the Legislature, the official powers and duties of the person
46 whose competency is at issue shall be suspended. If the official
47 is the Governor, the powers and duties of the Office of Governor
48 shall be performed by the person prescribed in Section 131 of this
49 Constitution. If the official is a statewide official other than
50 the Governor, the powers and duties of that official temporarily
51 shall be performed by some person appointed by the Governor. The
52 person temporarily performing the duties of such office shall
53 continue to perform such powers and duties until the official
54 elected to the office resumes such powers and duties or until the
55 Supreme Court declares a vacancy in such office and the office is
56 filled as provided under subsection (6) of this section. During
57 the time that the official's powers and duties are suspended under
58 this subsection, the official shall continue to receive the
59 compensation prescribed by law for the office.

60 (4) The commission appointed under subsection (2) of this
61 section shall conduct such medical, psychological and scientific
62 examinations and tests of the official, and may utilize such
63 consultants, technicians and equipment consistent with medical



64 protocol, as may be reasonably necessary to evaluate the presence
65 or absence of a state of impairment that would prevent the
66 official from properly discharging the powers and duties of his or
67 her office. The chairman of the commission shall prepare and file
68 a report of the commission's findings and recommendations with the
69 Supreme Court within fifteen (15) days from the date of the
70 commission's appointment. In its report, the commission shall
71 state whether or not it finds the official to be incompetent to
72 properly discharge the powers and duties of his or her office
73 because of physical or mental disability or impairment and, if the
74 commission finds such disability or impairment to exist, whether
75 or not such disability or impairment appears to be of a temporary
76 or permanent nature. The report of the commission and all tests,
77 examinations, records and other documents and proceedings of the
78 commission shall be confidential and may not be disclosed or made
79 available or known to anyone except (a) members of the commission,
80 (b) medical consultants, professionals and technicians performing
81 or providing services and information to the commission, (c) the
82 official about whom the commission's report concerns, (d) the
83 official's own physicians and medical consultants, professionals
84 and technicians, and (e) the members of the Supreme Court and its
85 essential employees and staff. The official who is the subject of
86 a commission's examination shall be entitled to select his or her
87 own physicians, medical consultants, professionals and technicians
88 to conduct such medical, psychological and scientific examinations
89 and tests as he or she deems necessary, but such official shall
90 not be entitled to refuse to undergo or submit to any medical,
91 psychological or scientific examinations, tests or procedures that
92 the commission directs the official to undergo if the examination,
93 test or procedure is determined by the commission to be reasonably
94 necessary and consistent with medical protocol for meaningful
95 examination and evaluation of the official's competency to
96 properly discharge the powers and duties of his or her office. If



97 the official refuses to undergo or submit to such examinations,
98 tests or procedures, the commission shall include the fact of such
99 refusal in its report to the Supreme Court.

100 (5) (a) Upon receipt of the commission's report, the
101 Supreme Court shall review immediately the commission's report,
102 findings and recommendations and determine the issue. However, in
103 making its determination, the court may conduct such hearings,
104 review such evidence and testimony and subpoena such witnesses,
105 documents, records and reports and other information that it
106 considers relevant and necessary in accordance with such rules and
107 procedures as the court deems proper in the matter. If the
108 official has refused to undergo or submit to an examination, test
109 or procedure directed by the commission, the court may declare the
110 office to which the official was elected to be vacant and order
111 the vacancy to be filled as provided by subsection (6) of this
112 section.

113 (b) All papers, documents, records, reports, testimony
114 and proceedings of the court in such matter shall be confidential.

115 (6) (a) If the Supreme Court determines that the official
116 is not so disabled or impaired as to prevent him or her from
117 properly discharging the powers and duties of the office, it shall
118 so find and enter its findings on the record. In such case, the
119 official shall immediately resume the powers and duties of his or
120 her office.

121 (b) If the court determines that the official is under
122 a temporary disability or impairment that prevents him or her from
123 properly discharging the powers and duties of the office, it shall
124 so order and the person designated under Section 131 of this
125 Constitution, if the official is the Governor, or the person
126 appointed under subsection (3) of this section to temporarily
127 discharge the powers and duties of the office, if the official is
128 some other statewide elected official, shall continue to perform
129 such duties until such time as the court otherwise orders. In



130 such case, the court shall direct the commission appointed by it
131 under subsection (2) of this section to continue to conduct
132 periodic examinations of the official and to report its findings
133 and recommendations to the court.

134 (c) If the court determines that the official is under
135 a disability or impairment that is likely to be permanent or that
136 is likely to continue to exist until or beyond the end of the
137 official's term of office, the court shall declare the office
138 vacant and the vacancy shall be filled in the manner prescribed by
139 general law.

140 (7) All determinations of the Supreme Court under the
141 provisions of this section shall be final and conclusive.

142 (8) The Legislature, by general law, may prescribe the
143 extent to which, if any, and the manner in which any compensation
144 shall be paid or any expenses shall be reimbursed to the Supreme
145 Court, the commission, the official or others under the provisions
146 of this section."

147 II.

148 Amend Section 131, Mississippi Constitution of 1890, to read
149 as follows:

150 "Section 131. When the Office of Governor shall become
151 vacant, by death or otherwise, the Lieutenant Governor shall
152 possess the powers and discharge the duties of the office. When
153 the Governor shall be absent from the state, or unable, from
154 sickness, injury or any other physical or mental disability or
155 impairment, to perform the duties of the office, the Lieutenant
156 Governor shall discharge the duties of the office until the
157 Governor be able to resume his duties; but if, from disability or
158 otherwise, the Lieutenant Governor shall be incapable of
159 performing said duties, or if he be absent from the state, the
160 President of the Senate Pro Tempore shall act in his stead; but if
161 there be no such president, or if he be disqualified by like
162 disability, or be absent from the state, then the Speaker of the



163 House of Representatives shall assume the Office of Governor and
164 perform the duties; and in case of the inability of the foregoing
165 officers to discharge the duties of Governor, the Secretary of
166 State shall convene the Senate to elect a President Pro Tempore.
167 The officer discharging the duties of Governor shall receive as
168 compensation while performing such duties, the compensation to
169 which he is regularly entitled by law for service in the position
170 to which he was elected and, in addition thereto, an amount equal
171 to the difference between such regular compensation and the
172 compensation of the Governor. Should a doubt arise as to whether
173 a vacancy has occurred in the Office of Governor * * *, then the
174 Secretary of State shall submit the question in doubt to the
175 judges of the Supreme Court, who, or a majority of whom, shall
176 investigate and determine the question and shall furnish to the
177 Secretary of State an opinion, in writing, determining the
178 question submitted to them, which opinion, when rendered as
179 aforesaid, shall be final and conclusive."

180 BE IT FURTHER RESOLVED, That these proposed amendments shall
181 be submitted by the Secretary of State to the qualified electors
182 at an election to be held on the first Tuesday after the first
183 Monday of November 2002, as provided by Section 273 of the
184 Constitution and by general law, with the amendments in this
185 resolution being voted on as one (1) amendment since the proposed
186 amendments pertain to one (1) subject.

187 BE IT FURTHER RESOLVED, That the explanation of this proposed
188 amendment for the ballot shall read as follows: "This proposed
189 constitutional amendment creates a new section of the Constitution
190 and amends one existing section to provide a procedure by which
191 the Legislature, upon adoption of a concurrent resolution, may
192 direct the Supreme Court to determine whether the Governor or any
193 other statewide elected official, because of sickness, injury or
194 any other physical or mental disability or impairment, is



195 competent to properly discharge the powers and duties of his or
196 her office."

