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

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

I.

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

"Section 131-A. (1) If the Governor or any other statewide
elected official, as a result of sickness, injury or any other
physical or mental disability or impairment, appears to be
incompetent to properly discharge the powers and duties of his or
her office, the Legislature, by concurrent resolution adopted by
not less than a majority of the elected membership of each house,
may direct the Supreme Court to determine the issue. If the
Legislature is not in session at the time the issue of competency
arises, then the Legislature may be convened in special session
for such purpose, and for such purpose only, by joint proclamation
of the Lieutenant Governor and the Speaker of the House, or by
joint proclamation of the President Pro Tempore of the Senate and
the Speaker of the House if the official whose competency is at
issue is the Lieutenant Governor."
(2) Upon adoption of a concurrent resolution by the Legislature as provided in subsection (1) of this section, the resolution shall be transmitted immediately to the Supreme Court. A copy of the resolution shall also be served upon the official. Within forty-eight (48) hours of receipt of the resolution, the Supreme Court, by not less than a majority of its members, shall appoint a commission consisting of an internist, a neurologist, a neurosurgeon, a psychiatrist and a surgeon. The membership of the commission shall be selected by the Supreme Court from among a list of persons qualified and licensed to practice medicine in the State of Mississippi submitted to the court by the state agency or board that licenses and regulates physicians. The commission shall select a chairman from among its membership.

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

(4) The commission appointed under subsection (2) of this section shall conduct such medical, psychological and scientific examinations and tests of the official, and may utilize such consultants, technicians and equipment consistent with medical
protocol, as may be reasonably necessary to evaluate the presence
or absence of a state of impairment that would prevent the
official from properly discharging the powers and duties of his or
her office. The chairman of the commission shall prepare and file
a report of the commission's findings and recommendations with the
Supreme Court within fifteen (15) days from the date of the
commission's appointment. In its report, the commission shall
state whether or not it finds the official to be incompetent to
properly discharge the powers and duties of his or her office
because of physical or mental disability or impairment and, if the
commission finds such disability or impairment to exist, whether
or not such disability or impairment appears to be of a temporary
or permanent nature. The report of the commission and all tests,
examinations, records and other documents and proceedings of the
commission shall be confidential and may not be disclosed or made
available or known to anyone except (a) members of the commission,
(b) medical consultants, professionals and technicians performing
or providing services and information to the commission, (c) the
official about whom the commission's report concerns, (d) the
official's own physicians and medical consultants, professionals
and technicians, and (e) the members of the Supreme Court and its
essential employees and staff. The official who is the subject of
a commission's examination shall be entitled to select his or her
own physicians, medical consultants, professionals and technicians
to conduct such medical, psychological and scientific examinations
and tests as he or she deems necessary, but such official shall
not be entitled to refuse to undergo or submit to any medical,
psychological or scientific examinations, tests or procedures that
the commission directs the official to undergo if the examination,
test or procedure is determined by the commission to be reasonably
necessary and consistent with medical protocol for meaningful
examination and evaluation of the official's competency to
properly discharge the powers and duties of his or her office. If
the official refuses to undergo or submit to such examinations, tests or procedures, the commission shall include the fact of such refusal in its report to the Supreme Court.

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

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

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

(b) If the court determines that the official is under a temporary disability or impairment that prevents him or her from properly discharging the powers and duties of the office, it shall so order and the person designated under Section 131 of this Constitution, if the official is the Governor, or the person appointed under subsection (3) of this section to temporarily discharge the powers and duties of the office, if the official is some other statewide elected official, shall continue to perform such duties until such time as the court otherwise orders. In
such case, the court shall direct the commission appointed by it under subsection (2) of this section to continue to conduct periodic examinations of the official and to report its findings and recommendations to the court.

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

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

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

II.

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

"Section 131. When the Office of Governor shall become vacant, by death or otherwise, the Lieutenant Governor shall possess the powers and discharge the duties of the office. When the Governor shall be absent from the state, or unable, from sickness, injury or any other physical or mental disability or impairment, to perform the duties of the office, the Lieutenant Governor shall discharge the duties of the office until the Governor be able to resume his duties; but if, from disability or otherwise, the Lieutenant Governor shall be incapable of performing said duties, or if he be absent from the state, the President of the Senate Pro Tempore shall act in his stead; but if there be no such president, or if he be disqualified by like disability, or be absent from the state, then the Speaker of the
House of Representatives shall assume the Office of Governor and perform the duties; and in case of the inability of the foregoing officers to discharge the duties of Governor, the Secretary of State shall convene the Senate to elect a President Pro Tempore. The officer discharging the duties of Governor shall receive as compensation while performing such duties, the compensation to which he is regularly entitled by law for service in the position to which he was elected and, in addition thereto, an amount equal to the difference between such regular compensation and the compensation of the Governor. Should a doubt arise as to whether a vacancy has occurred in the Office of Governor, then the Secretary of State shall submit the question in doubt to the judges of the Supreme Court, who, or a majority of whom, shall investigate and determine the question and shall furnish to the Secretary of State an opinion, in writing, determining the question submitted to them, which opinion, when rendered as aforesaid, shall be final and conclusive."

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

BE IT FURTHER RESOLVED, That the explanation of this proposed amendment for the ballot shall read as follows: "This proposed constitutional amendment creates a new section of the Constitution and amends one existing section to provide a procedure by which the Legislature, upon adoption of a concurrent resolution, may direct the Supreme Court to determine whether the Governor or any other statewide elected official, because of sickness, injury or any other physical or mental disability or impairment, is
competent to properly discharge the powers and duties of his or her office."