

By: Senator(s) Robertson

To: Constitution

SENATE CONCURRENT RESOLUTION NO. 506

1 A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO SECTION
 2 145, MISSISSIPPI CONSTITUTION OF 1890, TO PROVIDE FOR THE
 3 APPOINTMENT OF THE SUPREME COURT JUDGES; TO PROVIDE FOR THE
 4 SELECTION OF JUDGES; TO PROVIDE THAT THE GOVERNOR SHALL FILL
 5 VACANCIES BY APPOINTMENT; TO PROVIDE FOR A RETENTION ELECTION ON
 6 EACH JUDGE AFTER SERVING EACH TERM; TO ESTABLISH THE TERM OF
 7 OFFICE; TO AUTHORIZE THE LEGISLATURE TO PROVIDE FOR STAGGERED
 8 TERMS AND ELECTIONS; TO REPEAL SECTIONS 145A AND 145B, MISSISSIPPI
 9 CONSTITUTION OF 1890, WHICH PROVIDE FOR ADDITIONAL SUPREME COURT
 10 JUDGES; TO REPEAL SECTION 177, MISSISSIPPI CONSTITUTION OF 1890,
 11 WHICH PROVIDES FOR THE FILLING OF A JUDICIAL VACANCY WHEN THE
 12 LEGISLATURE IS NOT IN SESSION; TO REPEAL SECTIONS 149 AND 149A,
 13 MISSISSIPPI CONSTITUTION OF 1890, WHICH PROVIDE FOR THE TERMS OF
 14 OFFICE OF JUDGES OF THE SUPREME COURT AND AUTHORIZE THAT COURT TO
 15 SIT IN DIVISIONS; AND FOR RELATED PURPOSES.

16 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF
 17 MISSISSIPPI, That the following amendments to the Mississippi
 18 Constitution of 1890 be submitted to the qualified electors of the
 19 state:

20 I.

21 Amend Section 145, Mississippi Constitution of 1890, to read
 22 as follows:

23 Section 145. (1) (a) The Supreme Court shall consist of
 24 nine (9) judges, any five (5) of whom, when convened, shall
 25 constitute a quorum. The term of office of judges of the Supreme
 26 Court shall be eight (8) years. The Legislature shall divide the
 27 state into three (3) Supreme Court districts, and the Governor
 28 shall appoint three (3) judges for and from each district * * * in
 29 the manner provided by law. Each judge shall be subject to
 30 noncompetitive, nonpartisan retention election in order to succeed
 31 himself. The Legislature shall provide for the necessary
 32 retention election. The position of a judge who does not receive

33 sufficient votes to be retained shall be vacant upon expiration of
34 term unless earlier vacated.

35 (b) * * * The removal of a judge to the state capital
36 during his term of office shall not render him ineligible as his
37 own successor for the district from which he has removed. * * *

38 (2) The Supreme Court shall have power to sit in divisions
39 of three (3) judges each, any two (2) of whom when convened shall
40 constitute a quorum of the division; each division shall have full
41 power to hear and adjudge all cases that may be assigned to it by
42 the court. If the decision of a division is not unanimous, or if
43 any judge shall certify that in his opinion a decision of any
44 division of the court is in conflict with any prior decision of
45 the court or of a division, the cause shall then be considered and
46 adjudged by the full court or a quorum thereof.

47 (3) When a vacancy occurs in the office of judge of the
48 Supreme Court, the Governor shall fill the vacancy by appointment,
49 subject to the advice and consent of the Senate. If a vacancy
50 occurs before the expiration of a term, the appointment shall be
51 for the remainder of that term.

52 (4) A judge of the Supreme Court holding office or elected
53 thereto at the time this section takes effect shall remain in
54 office for the remainder of his term, unless he vacates the office
55 or is removed for cause. Each judge shall stand for retention
56 election as provided by law and this Constitution or the office
57 held by that judge shall be vacated upon expiration of term.

58 II.

59 Repeal Section 145-A, Mississippi Constitution of 1890, which
60 reads as follows:

61 Section 145-A. The Supreme Court shall consist of six (6)
62 judges, that is to say, of three (3) judges in addition to the
63 three (3) provided for by Section 145 of this Constitution, any
64 four (4) of whom when convened shall form a quorum. The
65 additional judges herein provided for shall be selected one (1)

66 for and from each of the Supreme Court districts in the manner
67 provided by Section 145 of this Constitution, or any amendments
68 thereto. Their terms of office shall be as provided by Section
69 149 of this Constitution, or any amendment thereto.

70 III.

71 Repeal Section 145-B, Mississippi Constitution of 1890, which
72 reads as follows:

73 Section 145-B. The Supreme Court shall consist of nine (9)
74 judges, that is to say, of three (3) judges in addition to the six
75 (6) provided for by Section 145A of this Constitution, any five
76 (5) of whom when convened shall constitute a quorum. The
77 additional judges herein provided for shall be selected one (1)
78 for and from each of the Supreme Court districts in the manner
79 provided by Section 145A of this Constitution or any amendment
80 thereto. Their terms of office shall be as provided by Section
81 149 of this Constitution or any amendment thereto.

82 IV.

83 Repeal Section 149, Mississippi Constitution of 1890, which
84 reads as follows:

85 Section 149. The term of office of the judges of the Supreme
86 Court shall be eight (8) years. The Legislature shall provide as
87 near as can be conveniently done that the offices of not more than
88 a majority of the judges of said court shall become vacant at any
89 one time; and if necessary for the accomplishment of that purpose,
90 it shall have power to provide that the terms of office of some of
91 the judges first to be elected shall expire in less than eight (8)
92 years. The adoption of this amendment shall not abridge the terms
93 of any of the present incumbents of the office of judge of the
94 Supreme Court; but they shall continue to hold their respective
95 offices until the expiration of the terms for which they were
96 respectively appointed.

97 V.

98 Repeal Section 149-A, Mississippi Constitution of 1890, which
99 reads as follows:

100 Section 149-A. The Supreme Court shall have power, under
101 such rules and regulations as it may adopt, to sit in two (2)
102 divisions of three (3) judges each, any two (2) of whom when
103 convened shall form a quorum; each division shall have full power
104 to hear and adjudge all cases that may be assigned to it by the
105 court. In event the judges composing any division shall differ as
106 to the judgment to be rendered in any cause, or in event any judge
107 of either division, within a time and in a manner to be fixed by
108 the rules to be adopted by the court, shall certify that in his
109 opinion any decision of any division of the court is in conflict
110 with any prior decision of the court or of any division thereof,
111 the cause shall then be considered and adjudged by the full court
112 or a quorum thereof.

113 VI.

114 Repeal Section 177, Mississippi Constitution of 1890, which
115 reads as follows:

116 Section 177. The Governor shall have power to fill any
117 vacancy which may happen during the recess of the Senate in the
118 office of judge or chancellor, by making a temporary appointment
119 of an incumbent, which shall expire at the end of the next session
120 of the Senate, unless a successor shall be sooner appointed and
121 confirmed by the Senate. When a temporary appointment of a judge
122 or chancellor has been made during the recess of the Senate, the
123 Governor shall have no power to remove the person or appointee,
124 nor power to withhold his name from the Senate for their action.

125 BE IT FURTHER RESOLVED, That the amendments in this
126 resolution shall be submitted to the qualified electors as one
127 amendment since the proposed amendments pertain to one subject at
128 an election to be held on the first Tuesday after the first Monday
129 of November 2004, as provided by Section 273 of the Constitution
130 and by law.

131 BE IT FURTHER RESOLVED, That the explanation of the amendment
132 for the ballot shall read as follows: "This proposed
133 constitutional amendment provides for the appointment of the
134 judges of the Supreme Court. The Governor will appoint judges
135 subject to the advice and consent of the Senate. Judges will
136 serve for eight (8) year terms, although the Legislature may
137 extend some terms in order to spread out the occurrence of
138 vacancies and to ensure that the retention election for each
139 position will occur in the November preceding the expiration of
140 that term. Prior to the expiration of each term, the people will
141 vote on whether to retain a judge when his term of office expires.
142 If the judge receives sufficient votes to be retained, the judge
143 will serve another term. If the judge does not receive sufficient
144 votes to be retained, that judge's position will be vacant upon
145 expiration of term, and the vacancy will be filled by appointment.

146 Sections which increased the size of the court, provided for
147 the term of office to be eight (8) years, and authorized the
148 hearing of cases in divisions are repealed, because the substance
149 of these sections is included in the proposed amendment.

150 Section 177, which provided for the filling of a judicial
151 vacancy when the Legislature is out of session at a time when
152 judges were all appointed rather than elected, is repealed as
153 surplusage."

154 BE IT FURTHER RESOLVED, That the Attorney General of the
155 State of Mississippi shall submit this resolution, immediately
156 upon adoption by the Legislature, to the Attorney General of the
157 United States or to the United States District Court for the
158 District of Columbia, in accordance with the provisions of the
159 Voting Rights Act of 1965, as amended and extended.