

By: Senator(s) Tollison

To: Constitution

SENATE CONCURRENT RESOLUTION NO. 549

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:

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 as provided by law. If a vacancy occurs before the expiration of
50 a term, the appointment shall be for the remainder of that term.

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

57 II.

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

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

66 provided by Section 145 of this Constitution, or any amendments
67 thereto. Their terms of office shall be as provided by Section
68 149 of this Constitution, or any amendment thereto.

69 III.

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

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

81 IV.

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

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

96 V.

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

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

112 VI.

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

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

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

130 BE IT FURTHER RESOLVED, That the explanation of the amendment
131 for the ballot shall read as follows: "This proposed

132 constitutional amendment provides for the appointment of the
133 justices of the Supreme Court. Justices will serve for eight (8)
134 year terms, although the Legislature may extend some terms one (1)
135 time only in order to spread out the occurrence of vacancies and
136 to ensure that the retention election for each position will occur
137 in the November preceding the expiration of that term. Prior to
138 the expiration of each term, the people will vote on whether to
139 retain a judge when his term of office expires. If the judge
140 receives sufficient votes to be retained, the judge will serve
141 another term. If the judge does not receive sufficient votes to
142 be retained, that judge's position will be vacant upon expiration
143 of term, and the vacancy will be filled by appointment of the
144 Governor.

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

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

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