

the proposed amendment to the Constitution of Ohio by adopting and adding to Article XV, Section 11. HERBERT S. DUFFY, Attorney General.”

Respectfully,

HERBERT S. DUFFY,
Attorney General.

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APPROVAL— BY DISCUSSION OF PROPOSAL TO AMEND THE CONSTITUTION OF OHIO BY ADOPTING AND ADDING TO ARTICLE IV, ETC.—OHIO COMMITTEE ON JUDICIAL SELECTION.

COLUMBUS, OHIO, March 24, 1937.

MR. FRED J. MILLIGAN, *Secretary, Ohio Committee on Judicial Selection, 16 East Broad Street, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination a written petition signed by one hundred qualified electors of this state containing a proposed constitutional amendment and a summary of the same under the provisions of Section 4785-175, General Code. It is proposed to amend the Constitution by adopting and adding to Article IV seven new sections, Sections 1a, 1b, 1c, 1d, 1e, 1f and 1g, and by amending Sections 2, 6, 10, 13, 14, 15 and 18 of Article IV. Copy of this proposed constitutional amendment and the summary of the same is attached hereto.

EXHIBIT A

TEXT OF PROPOSED AMENDMENT TO THE CONSTITUTION OF OHIO PROPOSED BY INITIATIVE PETITION TO BE SUBMITTED DIRECTLY TO THE ELECTORS.

BE IT RESOLVED BY THE PEOPLE OF THE STATE OF OHIO: That Section 1 of ARTICLE IV of the Constitution of Ohio be supplemented by adding Sections 1a,

1b, 1c, 1d, 1e, 1f and 1g and that Sections 2, 6, 10, 13, 14, 15 and 18 of ARTICLE IV of the Constitution of Ohio be amended to read as follows:

ARTICLE IV

Section 1. The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas, courts of probate, and such other courts inferior to the courts of appeals as may from time to time be established by law.

Section 1a. The governor shall appoint, subject to confirmation by the senate, the chief justice and all judges of the supreme court, all judges of the courts of appeals, and the judges of such other courts as shall be created or as shall be included by vote of the electors of any county or municipality as provided herein; but the chief justice and judges of said courts now in office shall continue therein until the end of the terms for which they were respectively elected, unless they are removed, die or resign. Every person so appointed shall have been admitted to practice as an attorney and counselor-at-law in this state and shall have such other qualifications as may be provided by law.

Section 1b. When a judicial office to be filled by appointment becomes or is about to become vacant the governor shall certify such fact to the judicial council herein created. Within thirty days after such certification is received the judicial council shall submit to the governor the names and qualifications of not less than three or more than five persons, qualified electors of the judicial district of the court in which such vacancy is to be filled, whom the judicial council deems qualified to hold such office. The governor shall make the appointment from the names so submitted; provided, however, that to fill a vacancy caused by the expiration of the terms of the chief justice or any judge holding office by election at the time of the adoption of this amendment, the certification by the judicial council and the appointment by the governor to fill such vacancy shall be completed at least seventy days before the general election next preceding the expiration of such elective term. If such chief justice or judge is appointed to succeed himself, confirmation by the senate shall not be required; but if he is not so appointed, he may, within sixty days of such election, file with the secretary of state his application to have his name and that of the person so appointed to succeed him, submitted at such general election to the voters of the judicial district of the court

in which such vacancy is to be filled. In such event the secretary of state shall cause the two names to be so submitted upon the ballot, and the person receiving the greater number of votes in such election shall be commissioned as such judge the same as though appointed under the provisions hereof, and confirmation by the senate shall not be required.

Section 1c. The judicial council shall consist of the chief justice of the supreme court and the following additional members whose terms of office shall be three years; one judge of a court of appeals to be chosen at a meeting of the judges of the courts of appeals of the state to be held the first January following the adoption of this amendment and every three years thereafter; one common pleas judge to be chosen by the common pleas judges of the state at a meeting to be held the first January following the adoption of this amendment and every three years thereafter; one municipal judge to be chosen by the municipal judges of the state at a meeting to be held the first January following the adoption of this amendment and every three years thereafter; one probate judge to be chosen by the probate judges of the state at a meeting to be held the first January following the adoption of this amendment and every three years thereafter; and three practicing attorneys at law to be appointed by the governor, for terms of one, two and three years each, and thereafter annually for terms of three years. The dates and places of the meetings of judges to choose members of the judicial council, and any additional powers and duties imposed upon the judicial council, shall be provided by law. The chief justice shall be president of the judicial council and shall serve so long as he holds office as chief justice of the supreme court. No other member of the judicial council shall serve more than two successive terms.

Section 1d. The chief justice of the supreme court, judges of the supreme court and of the courts of appeals, and the judges of such other courts as shall be created by law, and as shall be included by the vote of the electors of any county or municipality as provided herein, appointed by the governor shall hold office during good behavior, unless removed or retired in the manner provided by law. At the first general election occurring after such judge has served six years following his appointment, and at the general election occurring every sixth year thereafter so long as such judge remains in office, his name shall be placed on the ballot in the judicial district of the court for which he was appointed with the number of years of his

service stated and with the question, "Shall Judge..... (giving his name) be retained in office?" If a number of voters equal to a majority of all those voting in such district at such general election on this question, shall vote in the negative on the question, such judge shall be retired from office at the end of thirty days, and such office shall be declared vacant; otherwise such judge shall continue in office under the provisions hereof. These provisions shall likewise apply to the chief justice of the supreme court.

Section 1e. If a judicial office, to be filled by appointment, becomes vacant while the senate is not in session, the governor shall fill such judicial vacancy by appointment as herein provided, and shall submit such appointment to the senate thereafter, either in its next regular session, or in special session which the governor is hereby authorized to call for the purpose of confirming judicial appointments. The appointment so made shall be passed upon by the senate, and if the senate denies confirmation or fails to confirm such appointment within sixty days, the governor shall make another appointment from the names submitted by the judicial council, and submit the same to the senate; and so on until such vacancy is filled. In such case the governor need not certify such vacancy to the judicial council for recommendations unless all persons whose names have previously been submitted by the judicial council for such vacancy, have failed of confirmation. The incumbent of a judicial office shall continue in office until his successor has been appointed or elected and has qualified as provided in this article.

Section 1f. Laws shall be passed providing for the retirement, because of age or disability, and for compensation during retirement, of the chief justice of the supreme court and all other judges.

Section 1g. The provisions of Sections 1a, 1b, 1c, 1d, and 1e shall apply to the judge or judges of the court of common pleas and of any other court, including a municipal court, in a county whenever a majority of the electors of such county or such municipality voting on the question of the adoption of such provisions, in the manner provided by law, shall vote in favor thereof. Any county or municipality which has adopted such provisions may in the same manner rescind such adoption; but the question of rescinding shall not be submitted more than once in six years. The judge in office at the time of such

rescinding shall continue in office the remainder of the six year period for which he was appointed or retained.

Section 2. The supreme court shall, until otherwise provided by law, consist of a chief justice and six judges. A majority of the supreme court shall be necessary to constitute a quorum or to pronounce a decision except as hereinafter provided. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in all cases involving questions arising under the constitution of the United States or of this state, in cases of felony on leave first obtained, and in cases which originated in the courts of appeals, and such revisory jurisdiction of the proceedings of administrative officers as may be conferred by law. It shall hold at least one term in each year at the seat of government, and such other terms, there or elsewhere, as may be provided by law. Whenever the judges of the supreme court shall be equally divided in opinion as to the merits of any case before them and are unable for that reason to agree upon a judgment, that fact shall be entered upon the record and such entry shall be held to constitute an affirmance of the judgment of the court below. No law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one of the judges, except in the affirmance of a judgment of the court of appeals declaring a law unconstitutional and void. In cases of public or great general interest the supreme court may, within such limitation of time as may be prescribed by law, direct any court of appeals to certify its record to the supreme court, and may review, and affirm, modify or reverse the judgment of the court of appeals. All cases pending in the supreme court at the time of the adoption of this amendment by the people, shall proceed to judgment in the manner provided by existing law. No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the supreme court.

Section 6. The state shall be divided into appellate districts of compact territory bounded by county lines, in each of which there shall be a court of appeals consisting of three judges. The court of appeals shall hold at least one term annually in each county in the district and such other terms at a county seat in the district as the judges may determine upon, and the county commissioners of any county in which the court of appeals shall hold sessions shall make proper and convenient provisions for the holding of such court by its judges and

officers. Each judge shall be competent to exercise judicial powers in any appellate district of the state. The courts of appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and appellate jurisdiction in the trial of chancery cases, and, to review, affirm, modify, or reverse the judgments of the courts of common pleas, and other courts of record within the district as may be provided by law, and judgments of the courts of appeals shall be final in all cases, except cases involving questions arising under the constitution of the United States or of this state, cases of felony, cases of which it has original jurisdiction, and cases of public or great general interest in which the supreme court may direct any court appeals to certify its record to that court. No judgment of a court of common pleas, or other court of record, shall be reversed except by the concurrence of all judges of the court of appeals on the weight of the evidence, and by a majority of such court of appeals upon other questions; and whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination. The decisions in all cases in the supreme court shall be reported, together with the reasons therefor, and laws may be passed providing for the reporting of cases in the courts of appeals. The chief justice of the supreme court of the state shall determine the disability or disqualification of any judge of the courts of appeals, and he may assign any judge of the courts of appeals to any county to hold court.

Section 10. All judges, not appointed as herein provided, shall be elected for terms of not more than six years, each by the electors of the judicial district of the court of which he is to be a judge.

Section 13. In case the office of any judge of a court inferior to the courts of appeals, except judges in such counties as shall be included under this plan by vote of the electors, shall become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor; and such judge shall serve for the remaining period of such unexpired term.

Section 14. The judges of the supreme court, courts of appeals and the court of common pleas, and such other courts as shall be established by law, shall, at stated times, receive for

their services such compensation as may be provided by law, which shall not be diminished or increased during their term of office if elective, or in case of appointment, during any six year period for which such judge was appointed or retained. Judges may be members of the judicial council herein created, but they shall receive no fees or perquisites, nor hold any other offices of profit or trust, under the authority of this state, or the United States. All votes for any such judge for any elective office, except a judicial office, under the authority of this state, given by the general assembly, or the people, or under the authority of the United States shall be void.

Section 15. Laws may be passed to increase or diminish the number of the judges of the supreme court, to alter the number of appellate districts or the boundaries thereof, to increase beyond one or diminish to one the number of judges of the court of common pleas in any county and to establish or abolish other courts, whenever two-thirds of the members elected to each house shall concur therein.

Section 18. The several judges of the supreme court, of the courts of appeals, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law.

SCHEDULE

If a majority of the electors voting for the foregoing proposal shall exceed those voting against it, such amendments shall go into immediate effect and existing Sections 2, 6, 10, 13, 14, 15 and 18 of ARTICLE IV of the Constitution of Ohio shall be repealed and annulled.

SUMMARY OF AMENDMENT TO THE CONSTITUTION OF THE STATE OF OHIO PROPOSED BY INITIATIVE PETITION TO BE SUBMITTED DIRECTLY TO THE ELECTORS.

SUMMARY

The proposed amendment provides for the original appointment of judges of the supreme court and courts of appeals and enables the voters of a county or municipality to adopt or rescind the adoption of the appointment method of selecting the

judges of all lower courts in the county, including municipal courts. The method of appointment is briefly as follows: when a vacancy occurs the governor reports the fact to the judicial council, composed of eight members, as follows: the chief justice of the supreme court; one judge of the court of appeals, chosen by the judges of the courts of appeals; one common please judge, chosen by the common pleas judges; one probate judge, chosen by the probate judges; one municipal judge, chosen by the municipal judges; and three attorneys appointed by the governor. The judicial council recommends the names of not less than three or more than five persons to the governor who must appoint one of those so recommended. The governor's appointment requires confirmation by the senate.

At the end of each six years of service the judges so appointed are required to run against their records at the general election on a ballot without competing candidates for retention and continuance in office. Judges already in office continue in office for the term for which elected. Counties and municipalities which do not vote to have their judges appointed will continue to elect them as at present.

I am of the opinion that said summary is a fair and truthful statement of the proposed constitutional amendment and accordingly submit for uses provided by law the following certification:

"Pursuant to the duties imposed upon me under the provisions of Section 4785-175, General Code, I hereby certify that the attached summary is a fair and truthful statement of the proposed amendment to the Constitution of Ohio by adopting and adding to Article IV seven new sections, Sections 1a, 1b, 1c, 1d, 1e, 1f, and 1g, and by amending Sections 2, 6, 10, 13, 14, 15 and 18 of Article IV. HERBERT S. DUFFY, Attorney General."

Respectfully,

HERBERT S. DUFFY,
Attorney General.