



# House Joint Resolution 37

## PROPOSED CONSTITUTIONAL AMENDMENT

Vote cast by the 1980 legislature on final passage:  
HOUSE (98 members): Yeas, 96; Nays, 0; Absent or not voting, 2.  
SENATE (49 members): Yeas, 40; Nays, 0; Absent or not voting, 9.

NOTE: The ballot title and explanatory statement were written by the Attorney General as required by state law. The complete text of House Joint Resolution 37 begins on page 62.

### Official Ballot Title:

Shall a judicial qualifications commission be created and the supreme court empowered to discipline or remove judges upon its recommendation?

### The law as it now exists:

Supreme Court and Court of Appeals judges are elected for six-year terms. Superior court judges and other judges are elected for four-year terms.

Supreme Court and superior court judges are required to retire no later than the year in which they reach the age of seventy-five (Article IV, § 3 (a)).

Judges of the Supreme Court, Court of Appeals, and superior court are removable from office by joint resolution of three-fourths of the membership of each House of the state legislature (Article IV, § 9). Those judges are also subject to impeachment, which requires a majority of the House of Representatives and a two-thirds vote of the state Senate. Other judges are not subject to legislative removal from office.

Judges, except those of the Supreme Court, Court of Appeals and superior court, are subject to recall by the voters (Article I, § 33 and chapter 29.82 RCW). Those judges who are subject to recall are also subject to removal for misconduct or malfeasance in office in the manner provided by law (Article V, § 3). However, no implementing legislation has been enacted under that constitutional provision. Any judicial officer who is absent from the state for sixty consecutive days without obtaining an extension granted by the governor forfeits his office (Article IV, § 8). The legislature is also empowered by general law to authorize or require the retirement of Supreme Court, Court of Appeals, and superior court judges for physical or mental disability rendering the judge incapable of performing judicial duties (Article IV, § 3(a) and Article IV, § 30). However, no such general law has as yet been enacted.

The above outlined procedures presently provide the exclusive means of removal of judges in this state.

### Effect of HJR 37, if approved into law:

The constitutional procedures for removal of judges by the legislature or the people, as recited above, will not be altered by the approval of this amendment. A judicial qualifications commission will be created, consisting of seven members. Three shall be judges, one selected by and from among the judges of the Court of Appeals, one by and from among the superior court judges and the third by and from the district court judges. Two members shall be selected by the state bar association and two persons who are not attorneys will be appointed by the governor subject to confirmation by the Senate. The commission, pursuant to rules it is empowered to adopt, shall provide for confidentiality of its proceedings, consider complaints, conduct hearings and make findings and recommendations to the Supreme Court for disciplinary action against a sitting judge. The Supreme Court, after notice and a hearing to review the commission's proceedings and findings, may censure, suspend or remove a judge for violating a rule of judicial conduct, or may retire a judge for a disability that seriously interferes with the performance of judicial duties.

The legislature shall provide for the terms of office and compensation of the judicial qualifications commission.

### Statement for

Washington is the only state in the United States which does not have a judicial disciplinary body. Judges in this state cannot be disciplined, they can only be removed entirely from office by the cumbersome constitutional processes of impeachment or involuntary retirement.

HJR 37 creates a judicial discipline commission that can hear complaints of citizens and attorneys against judges and, where necessary, recommend sanctions ranging from reprimand to removal from office to the Supreme Court.

The overwhelming majority of our judges are conscientious and dedicated people. We do need a process, however, by which the incompetent, discourteous, or lazy judge could be reminded to live up to the high standards of the judiciary of this state.

Public confidence in the judiciary will be enhanced when the people know that there is a forum in which to lodge a complaint about the performance of a judge. Judges are elected officials with considerable responsibility; four or six years may be too long a time for a concern about judicial performance to be raised.

HJR 37 is an effective, necessary measure for the people of the State of Washington to ensure that their judicial officers continue to meet the highest standards of effectiveness and integrity.

### Rebuttal of statement against

There is presently no body before whom citizens can present complaints against judicial officers in our state.

There have been very few instances of judicial discipline in Washington because the constitution does not allow for any discipline against judges other than complete removal from office by the legislature; HJR 37 would allow for a range of disciplinary sanctions to correct judicial misbehavior.

The commission created by HJR 37 is an inexpensive means of insuring that we have the quality judiciary we have come to expect.

#### Voters Pamphlet Statement Prepared by:

PHIL TALMADGE, State Senator; RICK SMITH, State Representative; IRV NEWHOUSE, State Representative.

### Statement against

The question before the people of Washington is not: "Should we have a judicial qualifications commission?" Rather, it is: "How do we in Washington insure good judges and protect the people from bad judges?"

Our Constitution already has more provisions, including open elections and impeachment, for the removal and discipline of judges than for any other office. It should not be changed unless: (1) There is a problem needing correction; (2) the problem is more serious now than when the constitutional provisions on discipline and removal of judges were adopted; (3) existing provisions for discipline and removal of judges are ineffective.

No evidence was presented to the legislature of judges needing discipline or removal or of evils needing correction. No testimony, no reports, no examples. Nothing. No testimony that commissions improved the quality of judges. (The proponents neglect to mention that the activities of the California commission recently cost the taxpayers \$500,000. No judge was disciplined or removed but the excesses of the commission nearly destroyed the California Supreme Court.)

The proponents don't trust the judgment of the people and the existing constitutional provisions for discipline and removal. HJR 37 would intrude on the right of the people to elect and remove judges and give unwarranted power to a bureaucracy in Olympia. An independent, elected judiciary must not be turned over to a faceless agency responsible to no one.

HJR 37 is a dangerous proposal promoted under the guise of reform. It should be defeated.

### Rebuttal of statement for

"Cumbersome constitutional process of involuntary retirement"?! Gobbledegook. In plain English, this really means elections don't count, democratic processes are useless, the people are untrustworthy — turn it over to the bureaucracy. As to justifying bureaucratic interference because of length of judicial terms, there may be elected officials for whom any time in office, much less a full term, is too long. But, as with judges, this should be resolved by free, open elections.

#### Voters Pamphlet Statement Prepared by:

JAMES M. DOLLIVER, Justice, State Supreme Court; DANIEL J. EVANS, Former Governor of Washington; WILLIAM H. WILLIAMS, Justice, State Supreme Court.

Advisory Committee: PHILIP J. THOMPSON, Judge, Superior Court; THOMAS P. KEEFE, Lawyer; DANIEL F. SULLIVAN, Lawyer; RAY E. MUNSON, Judge, Court of Appeals.



**COMPLETE TEXT OF  
Senate Joint  
Resolution 132**

BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON, IN LEGISLATIVE SESSION ASSEMBLED:

THAT, At the next general election to be held in this state there shall be submitted to the qualified voters of the state for their approval and ratification, or rejection, an amendment to Article XXVI of the Constitution of the state of Washington to read as follows:

Article XXVI. The following ordinance shall be irrevocable without the consent of the United States and the people of this state:

FIRST. That perfect toleration of religious sentiment shall be secured and that no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

SECOND. That the people inhabiting this state do agree and declare that they forever disclaim all right and title to the ~~((unappropriated public))~~ lands lying within the boundaries of this state ~~((and to all lands lying within said limits))~~ owned or held by any Indian or Indian tribes; ~~((and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States;))~~ and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States and that the lands belonging to citizens of the United States residing without the limits of this state shall never be taxed at a higher rate than the lands belonging to residents thereof; and that no taxes shall be imposed by the state on lands or property therein, belonging to or which may be hereafter purchased by the United States or reserved for use: PROVIDED, That nothing in this ordinance shall preclude the state from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation, which exemption shall continue so long and to such an extent as such act of congress may prescribe.

THIRD. The debts and liabilities of the Territory of Washington and payment of the same are hereby assumed by this state.

FOURTH. Provision shall be made for the establishment and maintenance of systems of public schools free from sectarian control which shall be open to all the children of said state.

BE IT FURTHER RESOLVED, That the secretary of state shall cause notice of the foregoing constitutional amendment to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state.



**COMPLETE TEXT OF  
House Joint  
Resolution 37**

BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON, IN LEGISLATIVE SESSION ASSEMBLED:

THAT, At the next general election to be held in this state there shall be submitted to the qualified voters of the state for their approval and ratification, or rejection, an amendment to Article IV of the Constitution of the state of Washington by adding a new section to read as follows:

Article IV, section . . . . There shall be a judicial qualifications commission consisting of a judge selected by and from the court of appeals judges, a judge selected by and from the superior court judges, a judge selected by and from the district court judges, two persons admitted to the practice of law in this state selected by the state bar association, and two persons who are not attorneys appointed by the governor and confirmed by the senate.

The supreme court may censure, suspend, or remove a judge or justice for violating a rule of judicial conduct and may retire a judge or justice for disability which is permanent or is likely to become permanent and which seriously interferes with the performance of judicial duties. The office of a judge or justice retired or removed by the supreme court becomes vacant, and that person is ineligible for judicial office until eligibility is reinstated by the supreme court. The salary of a removed judge or justice shall cease.

The supreme court shall specify the effect upon salary when disciplinary action other than removal is taken. The supreme court may not discipline or retire a judge or justice until the judicial qualifications commission recommends after notice and hearing that action be taken and the supreme court conducts a hearing, after notice, to review commission proceedings and findings against a judge or justice.

The legislature shall provide for commissioners' terms of office and compensation. The commission shall establish rules of procedure for commission proceedings including due process and confidentiality of proceedings.

BE IT FURTHER RESOLVED, That the secretary of state shall cause notice of the foregoing constitutional amendment to be published at least four times during the four weeks next preceding the election in every legal newspaper in the state.