

**SENATE CONCURRENT
RESOLUTION No. 64**

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator MICHAEL J. DOHERTY

District 23 (Hunterdon, Somerset and Warren)

SYNOPSIS

Proposes constitutional amendment reducing initial appointed terms of Supreme Court justices, abolishing their reappointment with tenure, and establishing retention elections to serve additional terms.

CURRENT VERSION OF TEXT

As introduced.



SCR64 DOHERTY

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1 **A CONCURRENT RESOLUTION** proposing to amend Article VI,
2 Section VI, paragraph 3 of the New Jersey Constitution.
3
4 **WHEREAS**, The New Jersey Supreme Court has a decades-old
5 reputation for being a very activist court; and
6 **WHEREAS**, In many decisions the Supreme Court has overreached its
7 judicial authority to pursue its own vision of constitutional
8 jurisprudence, which goes far beyond interpreting the law as
9 adopted by the people in the New Jersey Constitution or developed
10 by the people’s elected representatives in the executive and
11 legislative branches; and
12 **WHEREAS**, The Supreme Court’s activism has resulted in the creation
13 of burdensome new laws and policies by an unelected judicial
14 branch that is unaccountable to the public-at-large, and which
15 forces upon the elected branches the responsibility to fund and
16 administer such laws and policies; and
17 **WHEREAS**, There are no greater examples of the activist Supreme
18 Court’s overreach having an unwieldy impact upon New Jersey’s
19 social and fiscal wellbeing, without any direct public
20 accountability, than its multitude of decisions on education policy
21 and affordable housing; and
22 **WHEREAS**, Upon first declaring, in 1973, the existing system for
23 funding public schools unconstitutional in Robinson v. Cahill, 62
24 N.J. 473 (1973), and demanding in subsequent Robinson decisions
25 more education spending in poorer districts and tax increases to
26 fund such, the Supreme Court inappropriately assumed an activist,
27 policymaking role; and
28 **WHEREAS**, The Supreme Court expanded its role over education
29 policy beginning with Abbott v. Burke, 100 N.J. 269 (1985), and
30 has continued in this role for decades through a line of additional
31 Abbott decisions, with the Court demanding drastic increases in
32 student aid, school construction, and expanded educational and pre-
33 K services for mostly poor, urban districts, costing tens of billions
34 of dollars to implement; and
35 **WHEREAS**, In the affordable housing decision of Southern Burlington
36 County NAACP v. Township of Mount Laurel, 67 N.J. 151 (1975)
37 (“Mount Laurel I”), the Supreme Court unilaterally declared that all
38 municipalities had to alter their zoning laws to ensure each had a
39 constitutionally required “fair share” of housing available to low-
40 and moderate-income families, and in the follow-up decision
41 involving the same named parties, commonly referred to as “Mount
42 Laurel II,” 92 N.J. 158 (1983), the Court not only reiterated its “fair
43 share” housing obligation, it empowered private developers to sue
44 municipalities in order to comply with affordable housing demands;
45 and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 **WHEREAS**, Countless affordable housing lawsuits have caused
 2 irreversible, rapid court-ordered expansion of suburban and rural
 3 areas, lacking coordination with needed local or regional
 4 infrastructure improvements, and the resulting increased population
 5 sizes have strained services and forced the adoption of significant
 6 property tax increases to pay for extra services necessitated by the
 7 new development; and

8 **WHEREAS**, Having a Supreme Court made up of justices who are
 9 appointed and reappointed by the Governor with the Senate's
 10 advice and consent, with the possibility of serving until the
 11 constitutionally mandated retirement age of 70, without ever facing
 12 any direct public accountability for their jurisprudential decision
 13 making, has allowed the Court to actively engage in creating new
 14 law and policies beyond the Court's limited role of interpreting the
 15 law as adopted by the people in the New Jersey Constitution or
 16 developed by the people's elected representatives in the executive
 17 and legislative branches; and

18 **WHEREAS**, Establishing a new system of public accountability in
 19 which justices face periodic retention elections, resulting in their
 20 continuation or rejection of further service on the Supreme Court
 21 following their initial appointed term, will serve as a check upon
 22 the Supreme Court by the very people who are affected by its
 23 decisions and from whom its judicial power is derived; now,
 24 therefore,

25
 26 **BE IT RESOLVED** by the Senate of the State of New Jersey (the
 27 General Assembly concurring):

28
 29 1. The following proposed amendment to the Constitution of
 30 the State of New Jersey is agreed to:

31
 32 **PROPOSED AMENDMENT**

33
 34 Amend Article VI, Section VI, paragraph 3 to read as follows:

35 3. **【The】** a. Upon appointment by the Governor, with the
 36 advice and consent of the Senate, the Justices of the Supreme Court
 37 shall hold their offices for initial terms of four years and shall retain
 38 their offices for additional terms of four years by a vote of the
 39 people as set forth in this paragraph until attaining the age of 70
 40 years, and the Judges of the Superior Court shall hold their offices
 41 for initial terms of **【7】** seven years and upon reappointment shall
 42 hold their offices during good behavior until attaining the age of 70
 43 years; provided however, that, upon the abolition of the juvenile
 44 and domestic relations courts or family court and county district
 45 courts as provided by law, the judges in office in those former
 46 courts who have acquired tenure and the Judges of the Superior
 47 Court who have acquired tenure as a judge in those former courts
 48 prior to appointment to the Superior Court, shall have tenure as

1 Judges of the Superior Court **【. Judges】**; judges of the juvenile and
2 domestic relations courts or family court and county district courts
3 who have not acquired tenure as a judge of those former courts shall
4 hold their offices for the period of their respective terms which
5 remain unexpired and shall acquire tenure upon reappointment to
6 the Superior Court **【. Such justices and judges shall be retired**
7 **upon attaining the age of 70 years】**; and provided further, that, on
8 January 1, (year immediately following adoption), tenure shall be
9 abolished for all justices in office on that date who have acquired
10 tenure and thereafter all formerly tenured justices shall remain in
11 office and be subject to future retention elections as set forth in this
12 paragraph; justices who have not acquired tenure because their
13 initial terms have yet to expire by that date shall remain in office for
14 the period of such unexpired terms as provided for by their original
15 appointments, and be subject to future retention elections as set
16 forth in this paragraph.

17 b. (1) Each justice appointed to an initial term shall retain
18 office by a vote of the people occurring at the general election next
19 preceding the expiration of the justice's initial term. The election
20 shall be carried out in a manner as provided by the Legislature by
21 law, with the question of retention presented to the people on the
22 ballot under a nonpartisan designation, reading substantially as
23 follows: "Shall Justice (name of justice) of the New Jersey Supreme
24 Court be retained in office?" The ballot shall also indicate a choice
25 of "yes" to retain the justice, and "no" to not retain the justice. If a
26 majority of the legally qualified voters of the State voting thereon
27 vote to retain the justice, that justice shall be retained for an
28 additional term of four years, or until attaining the age of retirement
29 if occurring sooner, with the retained justice's term beginning on
30 the anniversary date of the justice's initial appointment. Unless
31 retired, the justice shall be subject to another retention election in a
32 like manner every four years. If a majority of the legally qualified
33 voters of the State voting thereon vote not to retain the justice, the
34 justice shall remain in office until the expiration of the term
35 currently being served and thereafter a vacancy shall exist requiring
36 a nomination and appointment by the Governor, with the advice and
37 consent of the Senate. A justice who is not retained as the result of
38 a retention election shall not be eligible for any subsequent judicial
39 office in this State.

40 (2) The Justices of the Supreme Court in office on January 1,
41 (year immediately following adoption) whose tenure is abolished
42 and who remain in office shall, unless attaining the age of
43 retirement, be subject to the following schedule of retention
44 elections: the justice most senior in service on the Supreme Court
45 shall be subject to a retention election in the first year next
46 following the year of tenure being abolished; the justices second
47 and third most senior in service on the Supreme Court shall be
48 subject to a retention election in the second year next following the

1 year of tenure being abolished; the justices fourth and fifth most
2 senior in service on the Supreme Court shall be subject to a
3 retention election in the third year next following the year of tenure
4 being abolished; and the remaining justices shall be subject to a
5 retention election in the fourth year next following the year of
6 tenure being abolished.

7 c. Provisions for the pensioning of the Justices of the Supreme
8 Court and the Judges of the Superior Court shall be made by law.
9 (cf: Art. VI, Sec. VI, par. 3; amended effective December 8, 1983)

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11 2. When this proposed amendment to the Constitution is finally
12 agreed to pursuant to Article IX, paragraph 1 of the Constitution, it
13 shall be submitted to the people at the next general election
14 occurring more than three months after the final agreement and
15 shall be published at least once in at least one newspaper of each
16 county designated by the President of the Senate, the Speaker of the
17 General Assembly and the Secretary of State, not less than three
18 months prior to the general election.

19
20 3. This proposed amendment to the Constitution shall be
21 submitted to the people at that election in the following manner and
22 form:

23 There shall be printed on each official ballot to be used at the
24 general election, the following:

25 a. In every municipality in which voting machines are not used, a
26 legend which shall immediately precede the question as follows:

27 If you favor the proposition printed below make a cross (X), plus
28 (+), or check (✓) in the square opposite the word "Yes." If you are
29 opposed thereto make a cross (X), plus (+) or check (✓) in the
30 square opposite the word "No."

31 b. In every municipality the following question:

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		<p>CONSTITUTIONAL AMENDMENT CONCERNING THE APPOINTMENT AND RETENTION OF STATE SUPREME COURT JUSTICES</p> <p>Do you approve amending the Constitution to reduce the initial term of appointment of Supreme Court justices and the process for them to serve more terms?</p> <p>The proposed amendment would reduce the appointed terms of justices to four years. It would also abolish reappointment with tenure, and instead require continuing voter approval to stay in office.</p>
	YES	

		<p>INTERPRETIVE STATEMENT</p> <p>Currently, the seven State Supreme Court justices are appointed by the Governor, with the advice and consent of the Senate. They serve an initial term of seven years. If reappointed, they have tenure until retirement at age 70.</p> <p>The proposed amendment would reduce the initial terms of new justices to four years. It would also abolish any new reappointments with tenure. Instead, each justice would be subject to a public vote to remain in office. The vote would take place at the last November general election that occurs during a justice’s term.</p> <p>If a majority of voters agreed to keep a justice, the justice would serve a new term of four years, or until reaching retirement if happening sooner. Unless retired, another vote would take place every four years. If a majority of voters reject a justice, the justice would complete the justice’s current term and then leave office. The Governor would appoint, with the Senate’s advice and consent, a new justice. A justice who is rejected would not be eligible to serve in any other State judicial office.</p> <p>The tenure of any current justice would be abolished, and each would be subject to future votes to stay in office as explained above. These votes would be initially staggered, so no more than two justices would be voted on in any election. Current untenured justices would serve out the remainder of their initial seven-year term, not a shorter four-year term. These justices would be subject to future votes as explained above, with the first occurring the final November of their initial term.</p>
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STATEMENT

This proposed constitutional amendment concerns the appointment and retention of New Jersey Supreme Court justices. Specifically, the proposed amendment would reduce the initial appointed terms of new justices to four years, abolish reappointment with tenure, and establish retention elections in order

1 for justices to serve additional four-year terms (or until attaining the
2 retirement age of 70 if occurring sooner).

3 Based on the proposed amendment, each justice appointed to an
4 initial term would retain office by a vote of the people occurring at
5 the general election next preceding the expiration of the justice's
6 initial term. The election would be carried out in a manner as
7 provided by the Legislature by law, with the question of retention
8 presented to the people on the ballot under a nonpartisan
9 designation, reading substantially as follows: "Shall Justice (name
10 of justice) of the New Jersey Supreme Court be retained in office?"
11 The ballot shall also indicate a choice of "yes" to retain the justice,
12 and "no" to not retain the justice.

13 If a majority of the legally qualified voters of the State voting in
14 the retention election vote to retain the justice, that justice would be
15 retained for an additional term of four years, or until attaining the
16 age of retirement if occurring sooner, with the retained justice's
17 term beginning on the anniversary date of the justice's initial
18 appointment. Unless retired, the justice would be subject to another
19 retention election in a like manner every four years. If a majority of
20 the legally qualified voters of the State vote not to retain the justice,
21 the justice would remain in office until the expiration of the term
22 currently being served and thereafter a vacancy would exist
23 requiring a nomination and appointment by the Governor, with the
24 advice and consent of the Senate. A justice who is not retained as
25 the result of a retention election would not be eligible for any
26 subsequent judicial office in this State.

27 The tenure of any current reappointed justice would be
28 abolished, and each would be subject to future public votes to retain
29 office as explained above. These votes would be initially staggered
30 based on the following schedule: the justice most senior in service
31 on the Supreme Court would be subject to a retention election in the
32 first year next following the year of tenure being abolished; the
33 justices second and third most senior in service on the Supreme
34 Court would be subject to a retention election in the second year
35 next following the year of tenure being abolished; the justices
36 fourth and fifth most senior in service on the Supreme Court would
37 be subject to a retention election in the third year next following the
38 year of tenure being abolished; and the remaining justices would be
39 subject to a retention election in the fourth year next following the
40 year of tenure being abolished.

41 Current untenured justices would serve out the remainder of their
42 initial seven-year term (the proposed amendment does not reduce
43 these to four-year terms, allowing for the further staggering of
44 retention elections amongst the seven justices). These justices
45 would be subject to future public votes to retain office as explained
46 above, with the first such election occurring at the general election
47 next preceding the expiration of the justice's initial term.

1 The sponsor recognizes that the New Jersey Supreme Court has a
2 decades-old reputation for being a very activist court. In many
3 decisions the Supreme Court has overreached its judicial authority
4 to pursue its own vision of constitutional jurisprudence, which goes
5 far beyond interpreting the law as adopted by the people in the New
6 Jersey Constitution or developed by the people's elected
7 representatives in the executive and legislative branches.

8 The Supreme Court's activism has resulted in the creation of
9 burdensome new laws and policies by an unelected judicial branch
10 that is unaccountable to the public-at-large, and which forces upon
11 the elected branches the responsibility to fund and administer such
12 laws and policies. There are no greater examples of the activist
13 Supreme Court's overreach having an unwieldy impact upon New
14 Jersey's social and fiscal wellbeing, without direct public
15 accountability, than its multitude of decisions on education policy
16 and affordable housing. See, e.g., Robinson v. Cahill, 62 N.J. 473
17 (1973) and subsequent Robinson decisions; Abbott v. Burke, 100
18 N.J. 269 (1985) and subsequent Abbott decisions; and Southern
19 Burlington County NAACP v. Township of Mount Laurel, 67 N.J.
20 151 (1975) ("Mount Laurel I"), and 92 N.J. 158 (1983) ("Mount
21 Laurel II").

22 The sponsors' intent is to establish a new system of public
23 accountability in which justices face periodic retention elections,
24 resulting in their continuation or rejection of further service on the
25 Supreme Court following their initial gubernatorial appointment,
26 with the Senate's advice and consent. These retention elections are
27 meant to serve as a check upon the Supreme Court by the very
28 people who are affected by its decisions and from whom its judicial
29 power is derived.