

By: Ellis

S.J.R. No. 40

A JOINT RESOLUTION

1 proposing a constitutional amendment abolishing the court of
2 criminal appeals and establishing one supreme court with civil and
3 criminal jurisdiction.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subsection (a), Section 11a, Article I, Texas
6 Constitution, is amended to read as follows:

7 (a) Any person (1) accused of a felony less than capital in
8 this State, who has been theretofore twice convicted of a felony,
9 the second conviction being subsequent to the first, both in point
10 of time of commission of the offense and conviction therefor, (2)
11 accused of a felony less than capital in this State, committed while
12 on bail for a prior felony for which he has been indicted, (3)
13 accused of a felony less than capital in this State involving the
14 use of a deadly weapon after being convicted of a prior felony, or
15 (4) accused of a violent or sexual offense committed while under the
16 supervision of a criminal justice agency of the State or a political
17 subdivision of the State for a prior felony, after a hearing, and
18 upon evidence substantially showing the guilt of the accused of the
19 offense in (1) or (3) above, of the offense committed while on bail
20 in (2) above, or of the offense in (4) above committed while under
21 the supervision of a criminal justice agency of the State or a
22 political subdivision of the State for a prior felony, may be denied
23 bail pending trial, by a district judge in this State, if said order
24 denying bail pending trial is issued within seven calendar days

1 subsequent to the time of incarceration of the accused; provided,
2 however, that if the accused is not accorded a trial upon the
3 accusation under (1) or (3) above, the accusation and indictment
4 used under (2) above, or the accusation or indictment used under (4)
5 above within sixty (60) days from the time of his incarceration upon
6 the accusation, the order denying bail shall be automatically set
7 aside, unless a continuance is obtained upon the motion or request
8 of the accused; provided, further, that the right of appeal to the
9 Supreme Court [~~of Criminal Appeals~~] of this State is expressly
10 accorded the accused for a review of any judgment or order made
11 hereunder, and said appeal shall be given preference by the Supreme
12 Court [~~of Criminal Appeals~~].

13 SECTION 2. Section 1, Article V, Texas Constitution, is
14 amended to read as follows:

15 Sec. 1. (a) The judicial power of this State shall be vested
16 in one Supreme Court, [~~in one Court of Criminal Appeals,~~] in Courts
17 of Appeals, in District Courts, in County Courts, in Commissioners
18 Courts, in Courts of Justices of the Peace, and in such other courts
19 as may be provided by law.

20 (b) The Legislature may establish such other courts as it
21 may deem necessary and prescribe the jurisdiction and organization
22 thereof, and may conform the jurisdiction of the district and other
23 inferior courts thereto.

24 (c) A reference in this constitution or other law to the
25 Court of Criminal Appeals means the Supreme Court, and a reference
26 to a judge of the Court of Criminal Appeals means a justice of the
27 Supreme Court.

1 SECTION 3. Section 1-a(8), Article V, Texas Constitution,
2 is amended to read as follows:

3 (8) After such investigation as it deems necessary, the
4 Commission may in its discretion issue a private or public
5 admonition, warning, reprimand, or requirement that the person
6 obtain additional training or education, or if the Commission
7 determines that the situation merits such action, it may institute
8 formal proceedings and order a formal hearing to be held before it
9 concerning the public censure, removal, or retirement of a person
10 holding an office or position specified in Subsection (6) of this
11 Section, or it may in its discretion request the Supreme Court to
12 appoint an active or retired District Judge or Justice of a Court of
13 Appeals, or retired ~~[Judge or]~~ Justice of the ~~[Court of Criminal~~
14 ~~Appeals or the]~~ Supreme Court, or retired Judge of the Court of
15 Criminal Appeals, as that court existed before January 1, 2004, as a
16 Master to hear and take evidence in any such matter, and to report
17 thereon to the Commission. The Master shall have all the power of a
18 District Judge in the enforcement of orders pertaining to
19 witnesses, evidence, and procedure. If, after formal hearing, or
20 after considering the record and report of a Master, the Commission
21 finds good cause therefor, it shall issue an order of public censure
22 or it shall recommend to a review tribunal the removal or
23 retirement, as the case may be, of the person in question holding an
24 office or position specified in Subsection (6) of this Section and
25 shall thereupon file with the tribunal the entire record before the
26 Commission.

27 SECTION 4. Section 3(a), Article V, Texas Constitution, is

1 amended to read as follows:

2 (a) The Supreme Court shall exercise the judicial power of
3 the state except as otherwise provided in this Constitution. Its
4 jurisdiction shall be coextensive with the limits of the State and
5 its determinations shall be final [~~except in criminal law matters~~].
6 Its appellate jurisdiction shall be final and shall extend to all
7 cases except [~~in criminal law matters and~~] as otherwise provided in
8 this Constitution or by law. The Supreme Court and the Justices
9 thereof shall have power to issue writs of habeas corpus, as may be
10 prescribed by law, and under such regulations as may be prescribed
11 by law, the said courts and the Justices thereof may issue the writs
12 of mandamus, procedendo, prohibition, certiorari and such other
13 writs, as may be necessary to enforce its jurisdiction. The
14 Legislature may confer original jurisdiction on the Supreme Court
15 to issue writs of quo warranto and mandamus in such cases as may be
16 specified, except as against the Governor of the State. The appeal
17 of all cases in which the death penalty has been assessed shall be
18 to the Supreme Court. The appeal of all other criminal cases shall
19 be to the Courts of Appeals as prescribed by law. In addition, the
20 Supreme Court may, on its own motion, review a decision of a Court
21 of Appeals in a criminal case as provided by law. Discretionary
22 review by the Supreme Court is not a matter of right, but of sound
23 judicial discretion.

24 SECTION 5. Section 3-c, Article V, Texas Constitution, is
25 amended to read as follows:

26 Sec. 3-c. (a) The supreme court has [~~and the court of~~
27 ~~criminal appeals have~~] jurisdiction to answer questions of state

1 law certified from a federal appellate court.

2 (b) The supreme court [~~and the court of criminal appeals~~]
3 shall promulgate rules of procedure relating to the review of those
4 questions.

5 SECTION 6. Section 5a, Article V, Texas Constitution, is
6 amended to read as follows:

7 Sec. 5a. The Supreme Court [~~, Court of Criminal Appeals,~~]
8 and each Court of Appeals shall each appoint a clerk of the court,
9 who shall give bond in the manner required by law, may hold office
10 for four years subject to removal by the appointing court for good
11 cause entered of record on the minutes of the court, and shall
12 receive such compensation as the legislature may provide.

13 SECTION 7. Section 5b, Article V, Texas Constitution, is
14 amended to read as follows:

15 Sec. 5b. The Supreme Court [~~and the Court of Criminal~~
16 ~~Appeals~~] may sit at any time during the year at the seat of
17 government or, at the court's discretion, at any other location in
18 this state for the transaction of business, and each term [~~of either~~
19 ~~court~~] shall begin and end with each calendar year.

20 SECTION 8. Section 7a(b), Article V, Texas Constitution, is
21 amended to read as follows:

22 (b) The membership of the board consists of the Chief
23 Justice of the Texas Supreme Court who serves as chairman, [~~the~~
24 ~~presiding judge of the Texas Court of Criminal Appeals,~~] the
25 presiding judge of each of the administrative judicial districts of
26 the state, the president of the Texas Judicial Council, and one
27 person who is licensed to practice law in this state appointed by

1 the governor with the advice and consent of the senate for a term of
2 four years. In the event of a vacancy in the appointed membership,
3 the vacancy is filled for the unexpired term in the same manner as
4 the original appointment.

5 SECTION 9. Section 11, Article V, Texas Constitution, is
6 amended to read as follows:

7 Sec. 11. No judge shall sit in any case wherein the judge
8 may be interested, or where either of the parties may be connected
9 with the judge, either by affinity or consanguinity, within such a
10 degree as may be prescribed by law, or when the judge shall have
11 been counsel in the case. When the Supreme Court or [~~the Court of~~
12 ~~Criminal Appeals,~~] the Court of Appeals[~~7~~] or any member of [~~any of~~
13 those courts shall be thus disqualified to hear and determine any
14 case or cases in said court, the same shall be certified to the
15 Governor of the State, who shall immediately commission the
16 requisite number of persons learned in the law for the trial and
17 determination of such cause or causes. When a judge of the District
18 Court is disqualified by any of the causes above stated, the parties
19 may, by consent, appoint a proper person to try said case; or upon
20 their failing to do so, a competent person may be appointed to try
21 the same in the county where it is pending, in such manner as may be
22 prescribed by law.

23 And the District Judges may exchange districts, or hold
24 courts for each other when they may deem it expedient, and shall do
25 so when required by law. This disqualification of judges of
26 inferior tribunals shall be remedied and vacancies in their offices
27 filled as may be prescribed by law.

1 SECTION 10. Section 28(a), Article V, Texas Constitution,
2 is amended to read as follows:

3 (a) A vacancy in the office of Chief Justice, Justice, or
4 Judge of the Supreme Court, [~~the Court of Criminal Appeals,~~] the
5 Court of Appeals, or the District Courts shall be filled by the
6 Governor until the next succeeding General Election for state
7 officers, and at that election the voters shall fill the vacancy for
8 the unexpired term.

9 SECTION 11. Section 31(c), Article V, Texas Constitution,
10 is amended to read as follows:

11 (c) The legislature may delegate to the Supreme Court [~~or~~
12 ~~Court of Criminal Appeals]~~ the power to promulgate such other rules
13 as may be prescribed by law or this Constitution, subject to such
14 limitations and procedures as may be provided by law.

15 SECTION 12. Article V, Texas Constitution, is amended by
16 adding Section 32 to read as follows:

17 Sec. 32. TEMPORARY PROVISION. (a) This section applies to
18 the constitutional amendment proposed by the 78th Legislature,
19 Regular Session, 2003, abolishing the court of criminal appeals and
20 vesting that court's criminal jurisdiction in the supreme court.
21 The constitutional amendment takes effect January 1, 2004.

22 (b) The court of criminal appeals and the positions of judge
23 and presiding judge of the court of criminal appeals are abolished
24 on January 1, 2004.

25 (c) Unless otherwise provided by the supreme court under
26 this subsection or by other law, a matter pending before the court
27 of criminal appeals immediately before January 1, 2004, is

1 considered pending in the supreme court on that date. The supreme
2 court by rule or order may make any provision necessary to ensure
3 that a change made by the constitutional amendment described by
4 Subsection (a) of this section or by the legislature in conformance
5 with that constitutional amendment does not adversely affect the
6 substantial rights of any party having a matter pending before any
7 court on January 1, 2004.

8 (d) Except as otherwise provided by law, rules adopted by
9 the court of criminal appeals that are in effect immediately before
10 January 1, 2004, are continued in effect until superseded by law or
11 supreme court rules.

12 (e) The supreme court by rule or order may adopt any
13 additional saving or transitional procedures or provisions the
14 supreme court considers appropriate to implement the
15 constitutional amendment described by Subsection (a) of this
16 section fairly and efficiently. A rule or order under this
17 subsection may be superseded by statute.

18 (f) This section expires January 1, 2007.

19 SECTION 13. Sections 4 and 5, Article V, Texas
20 Constitution, are repealed.

21 SECTION 14. This proposed constitutional amendment shall be
22 submitted to the voters at an election to be held November 4, 2003.
23 The ballot shall be printed to provide for voting for or against the
24 proposition: "The constitutional amendment abolishing the court of
25 criminal appeals and establishing one supreme court with civil and
26 criminal appellate jurisdiction."