1984

Session Law 84-303

Florida Senate & House of Representatives

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**COMMITTEE RECORDS**

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**Senate/House Journals**

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<td>May 31, 1984</td>
<td>SJ 147</td>
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**Committee/Floor Tapes**

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**Other Documentation**

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<tr>
<td>-----</td>
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</tr>
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By Committee on Judiciary and Representative Upchurch

A bill to be entitled
An act relating to the judiciary; amending ss.
26.031 and 34.022, P.S., to provide for
additional judges in specified circuit and
county courts, and providing for their election
to office; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2), (4), (5), (6), (8), (9),
(10), (11), (13), (15), (19), and (20) of section 26.031,
Florida Statutes, are amended to read:

26.031 Judicial circuits; number of judges,
salaries.--The number of circuit judges in each circuit shall
be as follows:

JUDICIAL CIRCUIT          TOTAL

(2) Second ............................. 2 8
(4) Fourth .............................. 25 24
(5) Fifth ................................ 11 10
(6) Sixth ............................... 29 28
(8) Eighth .............................. 9 8
(9) Ninth ............................... 19 18
(10) Tenth .............................. 14 13
(11) Eleventh .......................... 60 57
(13) Thirteenth ......................... 26 25
(15) Fifteenth .......................... 22 21
(19) Nineteenth ......................... 9 8
(20) Twentieth .......................... 12 11

CODING Words in struck through type are deletions from existing law, words underlined are additions
By Representative Titone

A joint resolution proposing an amendment to
Section 8 of Article V of the State
Constitution, relating to eligibility for the
office of judge, to require that a county court
judge be a member of the bar of Florida for the
5 years preceding his qualification.

Be It Resolved by the Legislature of the State of Florida:

That the amendment to Section 8 of Article V of the
State Constitution set forth below is agreed to and shall be
submitted to the electors of Florida for approval or rejection
at the general election to be held in November 1984 and, if
approved, shall take effect July 1, 1985:

SECTION 8. Eligibility.--No person shall be eligible
for office of justice or judge of any court unless he is an
elector of the state and resides in the territorial
jurisdiction of his court. No justice or judge shall serve
after attaining the age of seventy years except upon temporary
assignment or to complete a term, one-half of which he has
served. No person is eligible for the office of justice of
the supreme court or judge of a district court of appeal
unless he is, and has been for the preceding ten years, a
member of the bar of Florida. No person is eligible for the
office of circuit judge unless he is, and has been for the
preceding five years, a member of the bar of Florida. No
person is eligible for the office of unless otherwise provided
by general law--a county court judge unless he is, and has
been for the preceding five years, must be a member of the bar
of Florida.
BE IT FURTHER RESOLVED that in accordance with the requirements of section 101.161, Florida Statutes, the title and substance of the amendment proposed herein shall appear on the ballot as follows:

ELIGIBILITY TO BE COUNTY COURT JUDGE

Requires a county court judge to be a member of the bar of Florida for the 5 years immediately before he qualifies for that office.

*****************************************************************************

HOUSE SUMMARY

Proposes to require that a county court judge be a member of the bar of Florida for the 5 years immediately before he qualifies for that office.

CODING  Words in struck through type are deletions from existing law, words underlined are additions.
House Joint Resolution No. 37

A joint resolution proposing an amendment to Section 8 of Article V of the State Constitution, relating to eligibility for the office of judge, to require that a county court judge be a member of the bar of Florida for the 5 years preceding his qualification.

Be It Resolved by the Legislature of the State of Florida:

That the amendment to Section 8 of Article V of the State Constitution set forth below is agreed to and shall be submitted to the electors of Florida for approval or rejection at the general election to be held in November 1984 and, if approved, shall take effect July 1, 1985:

SECTION 8. Eligibility.—No person shall be eligible for office of justice or judge of any court unless he is an elector of the state and resides in the territorial jurisdiction of his court. No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which he has served. No person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless he is, and has been for the preceding ten years, a member of the bar of Florida. No person is eligible for the office of circuit judge unless he is, and has been for the preceding five years, a member of the bar of Florida. No person is eligible for the office of county court judge unless he is, and has been for the preceding five years, must be a member of the bar of Florida.

CODING: Words in square brackets are deletions from existing law, words underlined are additions.
BE IT FURTHER RESOLVED that in accordance with the requirements of section 101.161, Florida Statutes, the title and substance of the amendment proposed herein shall appear on the ballot as follows:

ELIGIBILITY TO BE COUNTY COURT JUDGE

Requires a county court judge to be a member of the bar of Florida for the 5 years immediately before he qualifies for that office.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
I. SUMMARY

A. Present Situation

Article V, Section 8 of the Florida Constitution states that unless otherwise provided by general law, a county court judge must be a member of the Florida Bar. Section 34.021(2) provides an exception to this requirement for any county court judge seeking reelection who, on the first day of the qualification period for election to office, is actively serving in office and is not under disqualification or suspension. Section 34.021(3), F.S., provides an exception for any person who was a county court judge prior to July 1, 1978, in a county having a population of 40,000 or less and who has successfully completed a three-year training program; this person is entitled to serve as a county court judge in any county having a population of 40,000 or less.

Pursuant to Article V, Section 8, no person may hold the office of circuit court judge unless he has been a member of the Florida Bar for five years; no person may hold the office of justice of the supreme court or judge of a district court of appeal unless he has been a member of the Florida Bar for ten years.

B. Effect of Proposed Changes

Upon enactment of HJR 37, no person would be eligible to serve as a county court judge unless he or she has been a member of the Florida Bar for the preceding five years. Those non-lawyer judges currently serving pursuant to s. 34.021 would no longer be eligible to serve.

II. FISCAL IMPACT

None.

III. COMMENTS

At the present time, there are approximately 26 county court judges who are not members of the Florida Bar. Some county court judges are members of the Florida Bar, but have not been members for five years.

This joint resolution requires approval by three-fifths of the members of both houses, and approval by the electors of Florida in the November 1984 election.

The Article V Review Commission's Final Report recommends that a person shall be a member of the Florida Bar for five years in order to be eligible to serve as a county court judge, and a member of the Florida Bar for ten years in order to be eligible to serve as a circuit court judge.
Also contained in the recommendation is a provision grandfathering those persons who currently sit as circuit or county court judges. This resolution contains neither the ten year circuit judge provision nor the grandfather clause.

IV. AMENDMENTS:

This resolution was amended to include a grandfather clause for those judges currently serving pursuant to s. 34.021.
A bill to be entitled
An act relating to the judiciary; amending ss. 26.031 and 34.022, F.S., to provide for additional judges in specified circuit and county courts; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (2), (4), (5), (6), (8), (9), (10), (11), (13), (15), (19), and (20) of section 26.031, Florida Statutes, are amended to read:

26.031 Judicial circuits; number of judges, salaries.--The number of circuit judges in each circuit shall be as follows:

<table>
<thead>
<tr>
<th>JUDICIAL CIRCUIT</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2) Second</td>
<td>9</td>
</tr>
<tr>
<td>(4) Fourth</td>
<td>25</td>
</tr>
<tr>
<td>(5) Fifth</td>
<td>11</td>
</tr>
<tr>
<td>(6) Sixth</td>
<td>29</td>
</tr>
<tr>
<td>(8) Eighth</td>
<td>9</td>
</tr>
<tr>
<td>(9) Ninth</td>
<td>19</td>
</tr>
<tr>
<td>(10) Tenth</td>
<td>14</td>
</tr>
<tr>
<td>(11) Eleventh</td>
<td>60</td>
</tr>
<tr>
<td>(13) Thirteenth</td>
<td>26</td>
</tr>
<tr>
<td>(15) Fifteenth</td>
<td>22</td>
</tr>
<tr>
<td>(19) Nineteenth</td>
<td>9</td>
</tr>
<tr>
<td>(20) Twentieth</td>
<td>12</td>
</tr>
</tbody>
</table>

Section 2. Subsections (6), (13), (31), (48), (50), (51), (52), (58), and (59) of section 34.022, Florida Statutes, are amended to read:

CODING: Words stricken are deletions; words underlined are additions
34.022 Number of county court judges for each county. — The number of county court judges in each county shall be as follows:

<table>
<thead>
<tr>
<th>COUNTY</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>(6) Broward</td>
<td>19 17</td>
</tr>
<tr>
<td>(13) Dade</td>
<td>34 32</td>
</tr>
<tr>
<td>(29) Hillsborough</td>
<td>11 10</td>
</tr>
<tr>
<td>(31) Indian River</td>
<td>2 4</td>
</tr>
<tr>
<td>(48) Orange</td>
<td>11 10</td>
</tr>
<tr>
<td>(50) Palm Beach</td>
<td>12 10</td>
</tr>
<tr>
<td>(51) Pasco</td>
<td></td>
</tr>
<tr>
<td>(52) Pinellas</td>
<td>12 11</td>
</tr>
<tr>
<td>(58) Sarasota</td>
<td>4 3</td>
</tr>
<tr>
<td>(59) Seminole</td>
<td>4 3</td>
</tr>
</tbody>
</table>

Section 3. This act shall take effect July 1, 1984, except that the provisions of this act authorizing an additional circuit judge for the thirteenth judicial circuit and an additional county court judge for Hillsborough County shall take effect April 1, 1985.

CODING: Words stricken are deletions; words underlined are additions.
I. SUMMARY:

A. Present Situation:

Article V, Sec. 9, Florida Constitution, sets out the procedure by which the number of judges needed in the state is determined. The first step in this process is the certification of need by the Supreme Court. The second step is the consideration of this certification by the Legislature. The current number of judges in each county, circuit, and District Court of Appeal are provided by statute as follows:

35.06 Organization of district courts of appeal—A district court of appeal shall be organized in each of the five appellate districts to be named District Court of Appeal, District. The number of judges of each district court of appeal shall be as follows:

1. In the first district there shall be 12 judges.
2. In the second district there shall be 10 judges.
3. In the third district there shall be 9 judges.
4. In the fourth district there shall be 8 judges.
5. In the fifth district there shall be 6 judges.

26.031 Judicial circuit: number of judges, salaries—The number of circuit judges in each court shall be as follows:

<table>
<thead>
<tr>
<th>JUDICIAL CIRCUIT</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>15</td>
</tr>
<tr>
<td>Second</td>
<td>8</td>
</tr>
<tr>
<td>Third</td>
<td>24</td>
</tr>
<tr>
<td>Fourth</td>
<td>10</td>
</tr>
<tr>
<td>Fifth</td>
<td>14</td>
</tr>
<tr>
<td>Sixth</td>
<td>8</td>
</tr>
<tr>
<td>Seventh</td>
<td>12</td>
</tr>
<tr>
<td>Eighth</td>
<td>10</td>
</tr>
<tr>
<td>Ninth</td>
<td>8</td>
</tr>
<tr>
<td>Tenth</td>
<td>10</td>
</tr>
<tr>
<td>Eleventh</td>
<td>57</td>
</tr>
<tr>
<td>Twelfth</td>
<td>11</td>
</tr>
<tr>
<td>Thirteenth</td>
<td>25</td>
</tr>
<tr>
<td>Fourteenth</td>
<td>14</td>
</tr>
<tr>
<td>Fifteenth</td>
<td>41</td>
</tr>
<tr>
<td>Sixteenth</td>
<td>14</td>
</tr>
<tr>
<td>Seventeenth</td>
<td>8</td>
</tr>
<tr>
<td>Eighteenth</td>
<td>11</td>
</tr>
<tr>
<td>Nineteenth</td>
<td>11</td>
</tr>
<tr>
<td>Twentieth</td>
<td>11</td>
</tr>
</tbody>
</table>

34.022 Number of county court judges for each county—The number of county court judges in each county shall be as follows:

<table>
<thead>
<tr>
<th>COUNTY</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alachua</td>
<td>4</td>
</tr>
<tr>
<td>Baker</td>
<td>1</td>
</tr>
<tr>
<td>Bay</td>
<td>2</td>
</tr>
<tr>
<td>Bradford</td>
<td>3</td>
</tr>
<tr>
<td>Brevard</td>
<td>5</td>
</tr>
<tr>
<td>Broward</td>
<td>17</td>
</tr>
<tr>
<td>Calhoun</td>
<td>1</td>
</tr>
<tr>
<td>Charlotte</td>
<td>1</td>
</tr>
</tbody>
</table>

(9) Citrus                        1
(10) Clay                        1
(11) Collier                      2
(12) Columbia                    1
(13) Dade                        32
(14) DeSoto                      1
(15) Duval                       1
(16) Duval                      12
(17) Escambia                     5
(18) Flagler                      1
(19) Franklin                    1
(20) Gadsden                     1
(21) Gilchrist                    1
(22) Glades                      1
(23) Gulf                        1
(24) Hamilton                    1
(25) Hardee                      1
(26) Hendry                      1
(27) Hernando                    1
(28) Highlands                   1
(29) Hillsborough               10
(30) Holmes                      4
(31) Indian River               1
(32) Jackson                     1
(33) Jefferson                   1
(34) Lafayette                  1
(35) Lake                       2
(36) Lee                         4
(37) Levy                        3
(38) Levy                       1
(39) Liberty                    1
(40) Madison                     1
(41) Manatee                    2
(42) Marion                     2
(43) Martin                     2
(44) Monroe                     3
(45) Nassau                     1
(46) Okaloosa                     2
(47) Okeechobee                 1
(48) Orange                     10
(49) Okeechobee                  2
(50) Palm Beach                  10
(51) Pasco                       2
(52) Pinellas                    11
(53) Polk                        6
(54) Putnam                      1
(55) St. Johns                   2
(56) St. Lucie                   2
(57) Santa Rosa                1
(58) Sarasota                     3
(59) Seminole                   3
(60) Sumter                     1
(61) Suwannee                    1
(62) Taylor                      1
(63) Union                      1
(64) Volusia                     6
(65) Wakulla                     1
(66) Walton                      1
(67) Washington                 1
B. **Effect of Proposed Change:**

PCB 7 would implement 100% of the Certification of Judicial Manpower for Circuit Courts and County Courts as required by the Florida Supreme Court in Opinion No. 64,742, Supreme Court of Florida, January 26, 1984. This would include 27 new judges to be effective July 1, 1984. This bill does not create any additional judgeships for the District Courts of Appeal, although the Supreme Court certified six.

**July 1, 1984**

<table>
<thead>
<tr>
<th>Circuit Court</th>
<th>County Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second Judicial Circuit</td>
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</tr>
<tr>
<td>Fourth Judicial Circuit</td>
<td>1</td>
</tr>
<tr>
<td>Fifth Judicial Circuit</td>
<td>1</td>
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<tr>
<td>Sixth Judicial Circuit</td>
<td>1</td>
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<tr>
<td>Eighth Judicial Circuit</td>
<td>1</td>
</tr>
<tr>
<td>Ninth Judicial Circuit</td>
<td>1</td>
</tr>
<tr>
<td>Tenth Judicial Circuit</td>
<td>1</td>
</tr>
<tr>
<td>Eleventh Judicial Circuit</td>
<td>3</td>
</tr>
<tr>
<td>Twelfth Judicial Circuit</td>
<td>1</td>
</tr>
<tr>
<td>Thirteenth Judicial Circuit</td>
<td>1</td>
</tr>
<tr>
<td>Fifteenth Judicial Circuit</td>
<td>1</td>
</tr>
<tr>
<td>Seventeenth Judicial Circuit</td>
<td>2</td>
</tr>
<tr>
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<td>1</td>
</tr>
<tr>
<td>Nineteenth Judicial Circuit</td>
<td>1</td>
</tr>
<tr>
<td>Twentieth Judicial Circuit</td>
<td>1</td>
</tr>
</tbody>
</table>

**II. FISCAL AND ECONOMIC IMPACT:** The state impact can be analyzed as follows:
### Fiscal Year 1983-84

<table>
<thead>
<tr>
<th>Type of Judge</th>
<th>Annual Judicial Unit Cost</th>
<th>Number of Judges</th>
<th>Total Cost</th>
</tr>
</thead>
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<tr>
<td>District Court of Appeal</td>
<td>174,181*</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Circuit Judge</td>
<td>100,565*</td>
<td>14</td>
<td>1,407,910</td>
</tr>
<tr>
<td>County Judge</td>
<td>92,542*</td>
<td>13</td>
<td>1,203,046</td>
</tr>
<tr>
<td></td>
<td></td>
<td>27</td>
<td>2,610,956</td>
</tr>
</tbody>
</table>

*The annual judicial unit costs are slightly higher in Palm Beach, Broward, Dade, Hillsborough and Pinellas Counties.

### III. COMMENTS

Attached hereto is the 1984 Certification Order of the Florida Supreme Court. The Certification Order recommended that the bill take effect August 1, 1984; however, this bill specifically provides that the judgeships shall be elective, and therefore is effective July 1, 1984 to allow such judicial candidates to qualify under the Florida Election Laws.
THE SUPREME COURT'S

ARTICLE V REVIEW

COMMISSION

FINAL REPORT
FEBRUARY 1, 1984
Trial Court Structure

1. **RECOMMENDATION:**

   IT IS RECOMMENDED THAT, IN ORDER TO IMPROVE THE LEGAL EXPERIENCE AND KNOWLEDGE OF TRIAL COURT JUDGES, THE ELIGIBILITY REQUIREMENT BE INCREASED TO PROVIDE THAT COUNTY COURT JUDGES BE MEMBERS OF THE FLORIDA BAR FOR FIVE YEARS AND THAT CIRCUIT JUDGES BE MEMBERS OF THE FLORIDA BAR FOR TEN YEARS.

The following amendment is proposed to implement this recommendation:

   **SECTION 8. Eligibility.**—No person shall be eligible for office of justice or judge of any court unless he is an elector of the state and resides in the territorial jurisdiction of his court. No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which he has served. No person is eligible for the office of justice of the supreme court, or judge of a district court of appeal, or judge of the circuit court unless he is, and has been for the preceding ten years, a member of the bar of Florida. No person is eligible for the office of circuit court judge unless he is, and has been for the preceding five years, a member of the bar of Florida. **Unless otherwise provided by general law, a county court judge must be a member of the bar of Florida.**
Schedule to Article V, Section 8.-- Any circuit court or county court judge who is in office at the date of the adoption of this constitutional provision shall be eligible to qualify and continue to serve in his or her current office as a circuit court or a county court judge.

Commentary: As presently written, article V, Section 8, provides that to be eligible to serve, a circuit court judge must be a member of the bar of Florida for five years and that a county court judge must be a member of the bar of Florida unless otherwise provided by general law. Pursuant to the "unless otherwise provided by general law" language, the legislature enacted section 34.021, Florida Statutes. Subsection (1) of section 34.021 provides that no person shall be eligible for election or appointment to the office of county court judge unless the person is a member of the bar of Florida prior to qualifying for election or submitting his name to the judicial nominating commission for appointment. Subsection (2) provides that a county court judge who is not a member of The Florida Bar is eligible to seek re-election if on the first day of the qualification period for election to the office, the judge is actively serving in the office and is not under suspension or disqualification. Subsection (3) provides that any person who was a county court judge prior to July 1, 1978, in any county having a population of 40,000 or less, according to the last decennial census, and who has successfully completed a three-year law training program approved by the supreme court for the training of county court judges who are not members of The Florida Bar shall be entitled to such election and to serve as a county court judge in any county having a population of 40,000 or less.

Subsection (4) provides that a non-lawyer county judge who is eligible for office under subsection (3) shall be entitled to serve as a county court judge in any county encompassed in the circuit in which he has been elected, when assigned thereto. Subsection (4) became effective October 1, 1983. See ch. 83-166, § 1, Laws of Fla.

The Commission's recommendation is in substantial accordance with House Joint Resolution 114, introduced in 1983 by Representative Joe Titone, and the Committee Substitute for Senate Joint Resolution 70, introduced in 1983 by Senators Peter Weinstein and James Scott. Both bills proposed increasing county court judge eligibility to five-year bar membership and both contained a
grandfather clause. Circuit court judge eligibility was not a subject of either bill.

The Commission recommends the increase in the eligibility requirement for county court judges for two reasons. First, as a result of population growth and increased urbanization in Florida, county court judges are handling more complicated matters than they once did. Second, increased population has caused increased circuit court caseloads and in many circuits county court judges are called upon to act as circuit court judges. The Commission believes that, because of these factors, a certain level of experience in the practice of law is necessary before an individual is qualified to serve as a county court judge and that these requirements should be written into the constitution. According to statistics presented to the Commission by Senator Weinstein, of all candidates for county court judge in 1982, twelve percent had less than five years' bar membership and three percent were incumbent non-attorney judges, seeking to continue in office. The Commission's proposal, consequently, would not substantially affect the pool of candidates for the office of county court judge. The Commission also believes that the increase in the complexity of the matters handled by the circuit courts and the increase in the circuit court caseload require a particular level of experience prior to service on the circuit bench. An eligibility requirement of ten years of bar membership, commensurate with the eligibility requirement for supreme court justices and district court judges, ensures that candidates for the office of circuit court judge have the necessary experience. (See alternative proposal for Recommendation 1 in Appendix.)

2. **RECOMMENDATION:**

WE RECOMMEND THAT THE ENTIRE JUDICIAL SYSTEM BE UNDER THE MERIT-SELECTION, MERIT-RETENTION PROCESS AND THAT THE MERIT-RETENTION PROCESS BE IMPLEMENTED FOR ALL TRIAL COURT JUDGES.

To implement this recommendation the following amendment to the constitution should be adopted:

SECTION 10. Retention; election and terms.--

(a) Any justice of the supreme court or any judge of a district court of appeal, circuit court, or county court may qualify for retention by a vote
House of Representatives

SUBCOMMITTEE REPORT

To: Chairman, Committee on Judiciary

The Subcommittee on Court Systems and Miscellaneous
met at 8:00 a.m. o'clock on March 7, 1984,
in Room 317 HOB, and considered HJR 37.

On motion to report the bill / FAVORABLE / FAVORABLE WITH AMENDMENTS (number)
the vote was:

YEA    MEMBER      NAY    YEA    MEMBER      NAY

x DUNBAR
x HAWKINS, LARRY
x LAWSON
x PAJCIC
x Upchurch

COSGROVE

Total Yea 5 Total Nays 0

Committee Chairman

SUBCOMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee
during consideration of this bill:

Name

Representing

Address

(If additional persons, enter on reverse side and check here _ )

Received by Parent Committee:

Date __________

Received by ________________
Charles J. BODNER, Appellant,
v.
Robert A. GRAY, Secretary of State of the
State of Florida, and Richard W. Ervin,
Attorney General of the State of Florida,
Appellees.

No. 30883.
Supreme Court of Florida.

An attorney, who had paid a qualifying fee of $875 in accordance with statutes relating to filing fees as a candidate for office of Justice of the Supreme Court, brought a suit against the Secretary of State and the Attorney General for a declaratory decree that the statutes are unconstitutional and for an injunction. The Circuit Court, Leon County, W. May Walker, J., rendered a final decree adjudging the statutes valid, and the attorney appealed. The Supreme Court, Drew, J., held that the statutes do not violate the provision of the Constitution that a person shall be eligible for the office of Justice of the Supreme Court if a citizen and a member of the state bar in good standing for at least ten years, and that the fee was not unreasonable and arbitrary.

Deed confirmed.

1. Judges

Statutes requiring candidate for office of Justice of Supreme Court to pay filing fee do not violate constitutional provision that one shall be eligible for such office if citizen and member of bar in good standing for at least ten years. F.S.A. §§ 99.031, 99.061; F.S.A. Const. art. 5, § 13.

2. Judges

Qualifying fee of $875 required to be paid by candidate for office of Justice of Supreme Court is not unreasonable and arbitrary. F.S.A §§ 99.031, 99.061.

3. Constitutional Law

There is extremely strong presumption of validity of statutes regulating conduct of elections.

4. Evidence

Supreme Court took judicial notice that great majority of votes cast in state are on voting machines.

Charles J. Bodner, Miami, for appellant.


DREW, Justice

This is an appeal from a final decree of the trial court directly passing upon the validity of a state statute.

Appellant, an attorney at law, a citizen of this State and a member of The Florida Bar in good standing for at least ten years prior to March 1, 1960 paid a qualifying fee of $875 to the Secretary of State in accordance with the requirements of Sections 99.031 and 99.061, Florida Statutes (1959), F.S.A. and filed his oath of candidacy in Group 1 for Justice, Supreme Court of Florida. Simultaneously with the payment of said qualifying fee, he filed his written protest with the Secretary of State alleging that Sections 99.031 and 99.061 were contrary to and in violation of the Constitution of the State of Florida in that they required from him as a candidate for the office of Justice of the Supreme Court constitutionally valid and in full force and effect.

"That the qualifying fee exacted from candidates under and Sections is a constitutionally valid, legal and reasonable legislative prerequisite and is binders upon said plaintiff."
tional qualifications to those set forth in Article V, Section 13 of the Constitution of the State of Florida; and further, that said sections were contrary to and in violation of the Constitution of the State of Florida and the laws of the State of Florida in that the charges for the filing fee and the party assessment were arbitrary and unreasonable. In said written protest, he demanded the repayment of said sums forthwith, which demand was refused by the Secretary of State.

Appellant then filed a bill for declaratory decree in the Circuit Court of Leon County 2 asserting the unconstitutionality of said sections, praying for an injunction restraining the Secretary of State from enforcing the provisions thereof and for an order directing the Secretary of State to refund the sums paid pursuant to said statutes. The litigation resulted in the final decree described in the first paragraph hereof.

Two points are presented for our consideration. The first is the constitutionality of the foregoing statutes. The second is that, if the said statutes be held to be constitutional, the amount of the charges required under the provisions thereof are excessive, arbitrary and unreasonable and, therefore, invalid. Both points will be disposed of together.

We first turn to the argument of appellant that the questioned sections of the statute are in violation of the Constitution because they amount to a legislative imposition of qualifications to hold the office of Justice of the Supreme Court of the State of Florida in addition to those set forth in Article V, Section 13 of the Constitution of the State of Florida. The designated provision of the Constitution provides "No person shall be eligible for the office of justice of the supreme court * * * unless he is a citizen of this state and unless he is at the time a member of the Florida Bar in good standing and for a period of at least ten years has been, a member of the bar of Florida." 3

It is quite clear from the quoted provision of the Constitution that the qualifications placed there are upon the eligibility to hold the office mentioned. The questioned statute imposes no additional qualification upon the right to hold the office. It deals with the requirements to become a candidate for the office. The payment of the fee mentioned is not required of a person, otherwise qualified to fill such an office by appointment nor is such a fee required of any candidate who might be elected in the general election to such office as a condition precedent to assuming the office. 4

In other words, the statute is concerned solely with the fee which is required of any candidate seeking the nomination of his party for such office.

While there are authorities holding to the contrary, 5 the great weight of authority supports the view that reasonable fees may be exacted from candidates for public office. 6

This Court, although it has not directly passed upon this particular proposition, has consistently followed the majority view in related questions.

In Mars v. Peters, Fla 1951, 52 So 2d 793, 795 we were presented with an attack on Section 102.29, Florida Statutes, F.S.A., which required the filing of a candidate's party loyalty oath. In that case this Court observed, in upholding the validity of said statute:

3. The county of the official residence of the Secretary of State. Minson Lumber Co. v. Lee, 1936, 128 Fla. 771, 171 So. 522; State ex rel. Ayala v. Knott, 1941, 148 Fla. 43, 3 So. 2d 522 and similar cases.

4. Such, for instance, as one who might be elected as a "write-in" candidate.

5. Johnson v. Grand Forks County, 1907, 16 N.D. 563, 113 N.W. 1071, L.R.A. 1905B.

"Conceding, as any student of free government must, that the party system is essential to our political life, we can well understand how short lived the party would be unless some means was afforded to maintain party integrity."

Moreover, in that opinion, we reached certain definite conclusions as to the necessity of party regulations in the democratic society in which we live. In the later case of Crowells v. Petersen, Fla. 1960, 118 So. 2d 539, where we were confronted with an attack upon the constitutionality of 99021, Florida Statutes (1957), requiring every candidate to subscribe to an oath or affirmation that he did not register as a member of any other political party during the two years immediately preceding the date of said oath, we upheld that provision and reaffirmed what was said in Mairs v. Peters.

[1] The rationale of these and other cases in a similar vein is clearly applicable to the questioned statutes levying the assessment complained of. We conclude that, so long as the amounts of such assessments are not palpably arbitrary and unreasonable, they are valid legislative enactments.

[2-4] We find no merit in appellant's contention that the amount of the assessment is unreasonable and arbitrary. The statement appears in American Jurisprudence "* * * such a requirement may not be sustained on the ground that it is a proper regulation for restricting the number of candidates." In the complex society in which we presently live, this statement is of doubtful validity. The Legislature of Florida, necessarily vested with great power in prescribing regulations governing the election of its public officials, has determined the amount of such fee that should be exacted. These acts and this determination come to us with a presumption of validity—an extremely strong presumption in statutes regulating the conduct of elections. Moreover, this Court can take judicial knowledge of the fact that the great majority of votes cast in this State are on voting machines. In the absence of statutes imposing reasonable fees upon the right to become a candidate for public office, the number could easily reach a point that would render the machinery set up by the Legislature for the purpose of electing its public officials wholly inoperative. It is not a valid presumption to assume that these considerations may well have been in the mind of the Legislature when these regulations were adopted.

We are not prepared to say that they are not reasonable and valid considerations in matters of this kind. The law places restraints upon all of its citizens in the exercise of their rights and liberties under a republican form of government. Such restraints have been found to be necessary in the development of our democratic processes to preserve the very liberties which we exercise. Similar restraints may lawfully be imposed upon individual candidates for public office.

Finding no error in the decree appealed from, the same be and is hereby affirmed.

THOMAS, C. J., and HOBSON, ROBERTS, THORNAL and O'CONNELL, JJ., and TAYLOR, Circuit Judge, concur.

7. 38 Am. Jur. Elections, § 125 (1958). The case cited as the authority for this conclusion in Johnson v. Grand Forks County, cited in footnote 5. The North Dakota Court in its view upon the subject generally represents the minority view on the question of the validity of such requirement.
Senate Joint Resolution No. ____________

A joint resolution proposing an amendment to Section 8, Article V of the State Constitution, relating to eligibility for the office of judge, to require that a county court judge be a member of the bar of Florida for the 5 years preceding his qualification and to allow for exceptions.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 8 of Article V of the State Constitution is hereby agreed to and shall be submitted to the electors of this state for approval or rejection at the general election to be held in November 1984 and if approved shall take effect July 1, 1985:

ARTICLE V

JUDICIARY

SECTION 8. Eligibility -- No person shall be eligible for office of justice or judge of any court unless he is an elector of the state and resides in the territorial jurisdiction of his court. No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which he has served. No person is eligible for the office of justice of the supreme court or judge of a district court of appeal unless he is, and has been for the preceding ten years, a member of the bar of Florida. No person is eligible for the office of circuit judge unless he is, and has been for the preceding five years, a member of the bar of Florida. No person is eligible for the office of unless otherwise provided.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
by general law, a county court judge unless he is, and has
been for the preceding five years, must be a member of the bar
of Florida; however, any county court judge who, on the first
day of the qualification period for such office, is actively
serving in such office and is not under suspension or
disqualification, shall be eligible to seek reelection to the
office which he holds.

BE IT FURTHER RESOLVED that the following statement be
placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTION 8

ELIGIBILITY TO BE COUNTY COURT JUDGE.--Proposing an
amendment to the State Constitution, effective July 1, 1985,
to require a county court judge to be a member of the bar of
Florida for the 5 years immediately before he qualifies for
that office, and providing an exception for incumbent county
court judges.

CODING. Words in struck through type are deletions from existing law, words underlined are additions.
I. SUMMARY:

A. Present Situation:

Article V, Section 8 of the State Constitution provides that a county court judge must be a member of The Bar of Florida unless otherwise provided by general law.

Subsection (2) of section 34.021, F.S., provides that a county court judge who is not a member of The Florida Bar is eligible to seek reelection if on the first day of the qualification period for election to the office, the judge is actively serving in the office and is not under suspension or disqualification. Subsection (3) provides that any person who was a county court judge prior to July 1, 1978, in any county having a population of 40,000 or less, according to the last decennial census, and who has successfully completed a 3-year law training program approved by the Supreme Court for the training of county court judges who are not members of The Florida Bar shall be entitled to such election and to serve as a county court judge in any county having a population of 40,000 or less. Subsection (4) provides that a county judge in a county having a population of 40,000 or less, who has successfully completed a law training program approved by the Supreme Court for the training of county court judges who are not members of The Florida Bar, is entitled to serve as a county court judge in any county within the circuit in which he has been elected.

B. Effect of Proposed Changes:

SJR 93 proposes an amendment to the State Constitution to provide that no person is eligible for the office of county court judge unless he is, and has been for the preceding five years, a member of The Florida Bar. However, the amendment provides that a county court judge who, on the first day of the qualification period, is actively serving in such office and is not under suspension or disqualification shall be eligible to seek reelection to the office which he holds.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

None.
III. COMMENTS:

In the 1982 election, sixteen candidates for county court judgeships had less than five years experience in the bar of Florida. Seven of those candidates were elected, and nine were defeated.

Currently there are twenty-seven county court judges with less than five years experience in the Bar. Twenty-six of those twenty-seven are non-lawyer judges.

Recently a county court judgeship became vacant in Union County which is in the 8th Judicial Circuit. The circuit is comprised of Alachua, Baker, Bradford, Gilchrist, Levy and Union Counties. Twelve attorneys submitted applications to the Judicial Nominating Commission. Two of the applicants were from out of the circuit, seven were from Alachua County, and three were from Union County. After considerable discussion, the commission nominated four of the applicants and their names were sent to the Governor. None of the nominees were from Union County, and all had been members of the Bar for at least five years.

A similar resolution, HJR 37, has been introduced in the House.

IV. AMENDMENTS:

None.
COMMITTEE ON __ JUDICIARY-CIVIL

DATE February 8, 1984
TIME 9:00 - 12:00 noon
PLACE Committee Room "B"
OTHER COMMITTEE REFERENCES:
(Rules & Calendar)

THE VOTE WAS:

moved by Sen. Fox:

<table>
<thead>
<tr>
<th>SENATORS</th>
<th>Aye</th>
<th>Nay</th>
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</thead>
<tbody>
<tr>
<td>GERSTEN, Joseph M. &quot;Joe&quot;</td>
<td>X</td>
<td></td>
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<tr>
<td>HAIR, Mattox</td>
<td>X</td>
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<td>JENNE, Kenneth C.</td>
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<td>JOHNSTON, Harry A., II</td>
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<tr>
<td>LANGLEY, Richard H.</td>
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<tr>
<td>FOX, Roberta</td>
<td>X</td>
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<tr>
<td>SCOTT, James A.</td>
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</table>

6 0
TOTAL

Favorably with 0 amendments
Favorably with Committee Substitute
Unfavorably
Temporarily Passed
Reconsidered
Not Considered

Please Complete: The key sponsor appeared ____________
A Senator appeared ____________
Sponsor's aide appeared ____________
Other appearance ____________
I. SUMMARY

A. Present Situation

Article V, Section 8 of the Florida Constitution states that unless otherwise provided by general law, a county court judge must be a member of the Florida Bar. Section 34.021(2) provides an exception to this requirement for any county court judge seeking reelection who, on the first day of the qualification period for election to office, is actively serving in office and is not under disqualification or suspension. Section 34.021(3), F.S., provides an exception for any person who was a county court judge prior to July 1, 1978, in a county having a population of 40,000 or less and who has successfully completed a three-year training program; this person is entitled to serve as a county court judge in any county having a population of 40,000 or less.

Pursuant to Article V, Section 8, no person may hold the office of circuit court judge unless he has been a member of the Florida Bar for five years; no person may hold the office of justice of the supreme court or judge of a district court of appeal unless he has been a member of the Florida Bar for ten years.

B. Effect of Proposed Changes

Upon enactment of HJR 37, no person would be eligible to serve as a county court judge unless he or she has been a member of the Florida Bar for the preceding five years. Those non-lawyer judges currently serving pursuant to s. 34.021 would no longer be eligible to serve.

II. FISCAL IMPACT

None.

III. COMMENTS

At the present time, there are approximately 26 county court judges who are not members of the Florida Bar. Some county court judges are members of the Florida Bar, but have not been members for five years.

This joint resolution requires approval by three-fifths of the members of both houses, and approval by the electors of Florida in the November 1984 election.

The Article V Review Commission's Final Report recommends that a person shall be a member of the Florida Bar for five years in order to be eligible to serve as a county court judge, and a member of the Florida Bar for ten years in order to be eligible to serve as a circuit court judge.
Also contained in the recommendation is a provision grandfathering those persons who currently sit as circuit or county court judges. This resolution contains neither the ten year circuit judge provision nor the grandfather clause.
Representative of The Committee on Pajisic

offered the following amendment:

On page 1, line 27 strike five

and insert: ten

adopted failed of adoption
HRJR 37

offered the following amendment:

On page 1, lines 27, 28 & 29 following the period (.) on line 27 STRIKE remainder of line 27 and all of lines 28 and 29 and INSERT:

Unless otherwise provided by general law, no person is eligible for the office of county court judge unless he is, and has

...
Amendment

On page 1........, lines 30-31...., and
On page 2........, lines 1-17....., strike
tall of said lines

If amendment is text from another bill insert:

Bill No. Draft No. With Changes? Yes

and insert:

preceding five years, a member of the bar of Florida. Unless
otherwise provided by general law, no person is eligible for
the office of a county court judge unless he is, and has been
for the preceding five years, must be a member of the bar of
Florida. However, a person shall be eligible for election or
appointment to the office of county court judge in a county
having a population of 40,000 or less if he is a member in
good standing of the bar of Florida.

BE IT FURTHER RESOLVED that the following statement be
placed on the ballot:

CONSTITUTIONAL AMENDMENT
ARTICLE V, SECTION 8

ELIGIBILITY TO BE COUNTY COURT JUDGE.--Proposing an
amendment to the State Constitution, effective July 1, 1985,
to require that unless otherwise provided by general law, no
person shall be eligible for the office of county court judge
unless he is, and has been for the preceding five years, a
member of the bar of Florida. However, a person shall be
eligible for election or appointment to the office of county

CODING: Words stricken are deletions; words underlined are additions.
court judge in a county having a population of 40,000 or less
if he is a member in good standing of the bar of Florida.
SJR 93

SENATE AMENDMENT

HB ___

Senator Weinstein......................moved the following amendment......which was adopted:

Title Amendment

In title, on page 1..........., lines 5-8......, strike all of said lines

If amendment is text from another bill insert:

<table>
<thead>
<tr>
<th>Bill No.</th>
<th>Draft No.</th>
<th>With Changes?</th>
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<tbody>
<tr>
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<td>Yes</td>
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</table>

and insert:

judge, to require that unless otherwise provided by general law, no person is eligible for the office of county court judge unless he is, and has been for the preceding five years a member of the Bar of Florida; providing an exception.

CODING: Words stricken are deletions; words underlined are additions.

(Amendment No. ____ Adopted ____ Failed ____ Date /__/__)
The Committee on .................. recommended the following amendment which was moved by Senator ................. and adopted: and failed:

Amendment

On page 1..........., lines 30-31....., and
On page 2..........., lines 1-17....., strike
all of said lines

If amendment is text from another bill insert:

<table>
<thead>
<tr>
<th>No.</th>
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<th>With Changes?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Yes</td>
</tr>
</tbody>
</table>

and insert:

preceding five years, a member of the bar of Florida. Unless otherwise provided by general law, no person is eligible for the office of a county court judge unless he is, and has been for the preceding five years, must be a member of the bar of Florida.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTION 8

ELIGIBILITY TO BE COUNTY COURT JUDGE.--Proposing an amendment to the State Constitution, effective July 1, 1985, to require that unless otherwise provided by general law, no person shall be eligible for the office of county court judge unless he is, and has been for the preceding five years, a member of the bar of Florida.

CODING: Words **stricken** are deletions; words *underlined* are additions.

* Amendment No. __, taken up by committee: Adopted ___
* Offered by ____________________________ Date __/__/ ___
Dear Mr. Wilson:

Pursuant to our conversation of this date, enclosed please find a copy of the staff analysis pertaining to HJR 37 increasing the qualifications for county court judge. Also enclosed is a copy of the Supreme Court's Article V Review Commission's analysis of this issue.

In regard to this issue you may also want to take a look at the case of Myers v. Hawkins, 362 So.2d 926 (Fla.1978) where the Florida Supreme Court held that a change in a constitutional provision did not apply to affected officials who held office on the effective date of the amendment. Under that holding it would appear that once in office, a county court judge would not be affected by the July 1, 1985 effective date of the constitutional change.

I hope this information is of some assistance to you.

Sincerely,

Richard Hixson
Staff Director

RH/e
Encl.