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**Constitutional Change: The Judicial Article**

Cooperative Extension South Dakota State University

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CONSTITUTIONAL CHANGE

The Judicial Article

Cooperative Extension Service
South Dakota State University
U. S. Department of Agriculture
The Judicial Article

By Claudia J. Lewis, intern, Constitutional Revision Commission, J. P. Hendrickson, head, Political Science Department, SDSU, and reviewed by Gordon Rose, Extension economist—public policy.

On November 7, 1972, the people of South Dakota will have the opportunity to vote on four replacement articles to the South Dakota Constitution. These articles would replace the present Executive, Judicial, Local Government, and Amendments and Revisions articles. Each of the proposed articles will be voted on separately.

The text of the proposed judicial article, along with explanatory material, is presented in this fact sheet. This article is the result of research and public hearings conducted by the South Dakota Constitutional Revision Commission and the 1972 Session of the South Dakota Legislature. It has received the endorsement of the South Dakota Bar Association. Having passed both houses of the Legislature unanimously, it was placed on the ballot for this November's election.

What is the goal of this proposal?
The goal is to provide South Dakota with the Constitutional framework that a modern court structure would need by blending the judicial traditions of this state with the principle of a unified court system.

The Constitutional Revision Commission based its recommendations on the philosophy that a Constitution should consist of basic principles and should be flexible enough to permit the people to adapt government to their changing needs; consequently, the proposed judicial article is briefer than the present article. It is intended to provide enduring principles, rather than spell out details that may soon be obsolete.

What is a unified judicial system?
It is exactly what the name implies. All of the courts involved—Supreme Court, Circuit Courts, and courts of limited jurisdiction—are part of one unified system. The type of cases each level of courts would handle is clearly defined to prevent duplication of responsibilities. Administrative principles, considered sound by the Constitutional Revision Commission, are incorporated to promote efficiency. The unified judicial system approach is widely accepted in court modernization in the United States.

Would the people still elect Supreme Court and Circuit Court Judges? (Section 7)
Yes, these judges would continue to be elected by the people in their districts or circuits on non-political ballots. Their terms would be lengthened to eight years. The Commission believes that the longer term would encourage qualified lawyers to give up law practices to serve on the bench. Vacancies occurring in these positions during terms of office would be filled by the Governor, as they are now.

How would the people be protected against poor judges in this system? (Section 9)
A judicial qualifications commission would be established which would have the power to investigate complaints against judges. The commission would inform the Supreme Court about these complaints and recommend whatever action it feels is necessary on the basis of its investigations. The Supreme Court could then conduct hearings and, if necessary, censure.

Present Judicial System

Supreme Court

District, County and City Courts combined in counties with cities of from 5,000-20,000 population

District-County Courts

Municipal Courts

Justice of the Peace Courts

Circuit Courts

Proposed Unified Judicial System

Supreme Court

Circuit Courts

Courts of Limited Jurisdiction

District, County and City Courts combined in counties with cities of from 5,000-20,000 population

District-County Courts

Municipal Courts

Justice of the Peace Courts

How would this system differ from the present system?
Presently, as shown in the diagram above, there are many overlapping courts at the trial court level. This results in duplication in the type of cases each court hears and sometimes creates situations in which an individual must have part of his case heard in one court and another part heard in another court.

The proposed unified system, as shown in the diagram above, includes three distinct levels of courts. The types of cases each level would handle is clearly defined to prevent duplication.

Presently, there is no overall central administration of the court system. The proposal creates the office of Chief Justice of the Supreme Court as administrative head of the courts system and provides lines of administrative responsibility throughout the system.
Who would provide administrative leadership? (Section 8 and 11)

The Chief Justice of the Supreme Court would be administrative head of the unified judicial system. It would be his responsibility to make sure that funds and judges are efficiently and effectively used throughout the system. He would prepare the annual budget for the entire system, based on statistical data such as caseloads and travel in each circuit. The Chief Justice would appoint one of the several judges elected in each circuit to act as presiding circuit judge for their district. This would create a chain of administrative responsibility similar to that used in other governmental and business organizations. The Chief Justice would also be able to assign circuit judges to different circuits or to the Supreme Court should a temporary need arise. Maximum use of existing court personnel would thus be ensured. The Chief Justice also would have the authority to recall retired justices and judges to duty when needed.

Presently, the Constitution does not call for a Chief Justice. The practice is to rotate the job of presiding judge every year. The proposal provides that the Chief Justice would be selected from the justices elected to the Supreme Court for a term and in a manner to be decided by the Legislature. This change is made because of the administrative importance of the position in a unified court system.

The series of questions and answers above points out four major aspects of the proposed judicial article—the principal of a unified judicial system, election of judges by the people, the judicial qualifications commission, and the role of the Chief Justice as administrative head of the system. The following questions and answers explain in greater detail what the unified judicial system means.

What courts would make up the unified court system? (Sections 1 and 5)

Three levels of courts are provided in the proposal. The Supreme Court would continue to serve as the appeals court. This means it would have the power to review decisions reached by lower courts. It would also retain its power to give advisory opinions to the Governor and to hear writs.

Circuit Courts would serve as the main trial courts. All cases involving state law would be heard first in one of the circuit courts, unless the cases involved limited areas of the law specifically granted to a court of limited jurisdiction. The legislature could grant circuit courts power to hear certain cases on appeal.

The third level of courts would be courts of limited jurisdiction. Limited jurisdiction means that these courts would have authority to hear only those cases dealing with that part of state law specifically granted to them by the state legislature. The legislature would create these courts as needed. For example, it might create a court of limited jurisdiction to handle low misdemeanors, city ordinances, and small claim cases.

Why are courts of limited jurisdiction not listed in the proposal? (Section 4)

Flexibility is the main reason. If these courts were specifically created in the Constitution, a constitutional amendment would be required to modify the system if it became obsolete. The proposed article would give the legislature flexibility to create courts as needed in response to varying demands in the state and to modify those that no longer serve a purpose.

What about the make up of the Supreme Court? (Section 2)

South Dakota has five Supreme Court Justices. The proposal would allow the number to increase to seven if the Court's caseload increased sufficiently to warrant the change.

Presently, Supreme Court Justices are selected from districts rather than at large. Because of the diverse terrain and economic interests in South Dakota, this method would be continued. The practice of allowing the legislature to determine Supreme Court districts is also retained. District boundaries would not be spelled out in the Constitution because population shifts could soon make these boundaries obsolete.

How would Circuit Courts be established? (Section 3)

Presently, the number of circuits, the area of each circuit, and the number of circuit judges is determined by the legislature. The proposal shifts this administrative responsibility to the Supreme Court. The change is intended to allow more flexible response to problems created by the varying demands placed on the circuit court. For example, if the caseload in a circuit were to suddenly pile up, the Supreme Court could temporarily assign additional judges to help meet the demand. If the volume of cases in each circuit changes, circuit boundaries could be adjusted to avoid wasted manpower by equalizing the workload. The Supreme Court, based on statistical information it would collect, would be in a position to decide where and when boundary changes should be made. If all circuits are overburdened, the Supreme Court could create new circuits and assign additional circuit judges.

What other administrative duty would the Supreme Court have? (Section 11)

It would appoint the court personnel it needs, such as a court administrator, clerks, and other staff.

What administrative duties would the Presiding Circuit Judge have? (Section 11)

The presiding judge of each circuit would perform administrative duties the Supreme Court delegated. He could appoint court personnel to serve courts of limited jurisdiction established within his circuit, unless the legislature decides they should be selected in another manner. He would appoint court staff to serve in each of the counties in his circuit.

What about the courts not specifically included in this unified system?

County-district courts, municipal courts, justice of the peace courts, and police magistrate courts are not specifically created by the proposal. To eliminate the problems of overlapping levels of courts, only the circuit court was specifically created at the general trial court level. However, if a need for any or all of these additional courts existed anywhere in the state, these courts could be continued by the legislature as courts
of limited jurisdiction. Otherwise the cases presently heard in these courts would be heard before an expanded circuit court.

What are other provisions of the proposal?

Rule Making (Section 12)
The Supreme Court would continue to establish rules governing admission to the South Dakota Bar, discipline of lawyers, terms of courts, and practice and procedure. Its rule-making authority would cover all courts in the system, to ensure uniformity. To make sure these powers are not abused, the legislature would have authority to change the rules.

Qualifications (Section 6)
All judges would have to be U.S. citizens, South Dakota residents, and voting residents of the jurisdiction from which they were elected. The present requirement regarding residency and age are omitted. The Commission felt these factors had little relevance to the qualifications needed to serve as a judge. Circuit and Supreme Court judges would have to be licensed attorneys.

The proposal also allows a Supreme Court Justice to live in Pierre where Supreme Court sessions are held, without losing his voting residence in his home district.

Restrictions (Section 10)
The proposal continues the present provision that denies judges the right to practice law. It also continues the practice of denying them the right to run for a political office while serving in a judicial office. This is to avoid political conflicts of interest.

Where can you get more information?
It is impossible to answer all your questions about constitutional revision in a publication of this size. If you would like more information ask your County Extension Agent for FS 566, "Constitutional Change—Questions and Answers," FS 567 on the Executive Article, FS 569 on the Local Government Article, and/or FS 570 on the Amendments and Revisions Article, or you may contact the League of Women Voters, local legislators or write to: Executive Secretary, Constitutional Revision Commission, c/o State Capitol, Pierre, S.D. 57501.

The text of the judicial proposal is included in this publication.

Constitutional Revision:
Article V Judicial Article
House Joint Resolution No. 512:

A JOINT RESOLUTION, Proposing and agreeing to an amendment to article V of the Constitution of the state of South Dakota, relating to the organization and function of the judicial department of state government.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF SOUTH DAKOTA, THE SENATE CONCURRING THEREIN:

Section 1. That at the next general election held in the state, the following amendment to article V of the Constitution of the state of South Dakota, as set forth in section 2 of this resolution, which is hereby agreed to, shall be submitted to the electors of the state for approval.

Section 2. That article V of the Constitution of the state of South Dakota be amended to read as follows:

Section 1. JUDICIAL POWERS
The judicial power of the state is vested in a unified judicial system consisting of a Supreme Court, circuit courts of general jurisdiction and courts of limited original jurisdiction as established by the Legislature.

Section 2. SUPREME COURT
The Supreme Court is the highest court of the state. It consists of a chief justice and four associate justices. Upon request by the Supreme Court the Legislature may increase the number of justices to seven. All justices shall be selected from compact districts established by the Legislature, and each district shall have one justice.

Section 3. CIRCUIT COURTS
The circuit courts consist of such number of circuits and judges as the Supreme Court determines by rule.

Section 4. COURTS OF LIMITED JURISDICTION
Courts of limited jurisdiction consist of all courts created by the Legislature having limited original jurisdiction.

Section 5. JURISDICTION OF COURTS
The Supreme Court shall have such appellate jurisdiction as may be provided by the Legislature, and the Supreme Court or any justice thereof may issue any original or remedial writ which shall then be heard and determined by that court. The Governor has authority to require opinions of the Supreme Court upon important questions of law involved in the exercise of his executive power and upon solemn occasions.

The circuit courts have original jurisdiction in all cases except as to any limited original jurisdiction granted to other courts by the Legislature. The circuit courts and judges thereof have the power to issue, hear and determine all original and remedial writs. The circuit courts have such appellate jurisdiction as may be provided by law.

Imposition or execution of a sentence may be suspended by the court empowered to impose the sentence unless otherwise provided by law.

Section 6. QUALIFICATIONS OF JUDICIAL PERSONNEL
Justices of the Supreme Court, judges of the circuit courts and persons presiding over courts of limited jurisdiction must be citizens of the United States, residents of the state of South Dakota and voting residents within the district, circuit or jurisdiction from which they are elected or appointed. No Supreme Court justice shall be deemed to have lost his voting residence in a district by reason of his removal to the seat of govern-
Section 7. JUDICIAL SELECTION
Justices of the Supreme Court and judges of the circuit courts shall be elected in a non-political election by the electorate of the district or circuit each represents for an eight-year term. In case of vacancy in an elected judicial office, the Governor will fill such vacancy by appointment for the balance of the unexpired term.

Section 8. SELECTION OF THE CHIEF JUSTICE
The chief justice shall be selected from among the justices of the Supreme Court for a term and in a manner to be provided by law. The chief justice may resign his office without resigning from the Supreme Court.

Section 9. QUALIFICATIONS COMMISSION
The Legislature shall provide by law for the establishment of a judicial qualifications commission which have such powers as the Legislature may provide, including the power to investigate complaints against any justice or judge and to conduct confidential hearings concerning the removal or involuntary retirement of a justice or judge. The Supreme Court shall prescribe by rule the means to implement and enforce the powers of the commission. On recommendation of the judicial qualifications commission the Supreme Court after hearing, may censure, remove or retire a justice or judge for action which constitutes willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, disability that seriously interferes with the performance of his duties or conduct prejudicial to the administration of justice which brings a judicial office into disrepute. No justice or judge shall sit in judgement in any hearing involving his own removal or retirement.

Section 10. RESTRICTIONS
During his term of office no Supreme Court justice or circuit court judge shall engage in the practice of law. Any Supreme Court justice or circuit court judge who becomes a candidate for an elective non-judicial office shall thereby forfeit his judicial office.

Section 11. ADMINISTRATION
The chief justice is the administrative head of the unified judicial system. The chief justice shall submit an annual consolidated budget for the entire unified judicial system, and the total cost of the system shall be paid by the state. The Legislature may provide by law for the reimbursement to the state of appropriate portions of such cost by governmental subdivisions. The Supreme Court shall appoint such court personnel as it deems necessary to serve at its pleasure.

The chief justice shall appoint a presiding circuit judge for each judicial circuit to serve at the pleasure of the chief justice. Each presiding circuit judge shall have such administrative power as the Supreme Court designates by rule and may, unless it be otherwise provided by law, appoint judicial personnel to courts of limited jurisdiction to serve at his pleasure. Each presiding circuit judge shall appoint clerks and other court personnel for the counties in his circuit who shall serve at his pleasure at a compensation fixed by law. Duties of clerks shall be defined by Supreme Court rule.

The chief justice shall have power to assign any circuit judge to sit on another circuit court, or on the Supreme Court in case of a vacancy or in place of a justice who is disqualified or unable to act. The chief justice may authorize a justice to sit as a judge in any circuit court.

The chief justice may authorize retired justices and judges to perform any judicial duties to the extent provided by law and as directed by the Supreme Court.

Section 12. RULE-MAKING POWER
The Supreme Court shall have general superintending powers over all courts and may make rules of practice and procedure and rules governing the administration of all courts. The Supreme Court by rule shall govern terms of courts, admission to the bar, and discipline of members of the bar. These rules may be changed by the Legislature.

Section 13. TRANSITION
The Legislature by law and the Supreme Court by rule shall provide for the orderly transition of the judicial system in conformity with this article.