

**Constitution Revision Commission  
Judicial Committee  
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 38

Relating to: JUDICIARY, Retention; election and terms; Vacancies

Introducer(s): Commissioner Stemberger

Article/Section affected:

Date: January 8, 2018

REFERENCE	ACTION
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____

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**I. SUMMARY:**

The proposal amends Sections 10 and 11 of Article V of the State Constitution to change the beginning and ending day of judicial terms from the first Tuesday after the first Monday in January of the year following the general election to the first Monday in January of the year following the general election. This proposal will be effective on January 8, 2019.

**II. SUBSTANTIVE ANALYSIS:**

**A. PRESENT SITUATION:**

The proposal amends Sections 10 and 11 of Article V of the State Constitution to change the beginning and ending day of judicial terms from the first Tuesday after the first Monday in January of the year following the general election to the first Monday in January of the year following the general election. This proposal will be effective on January 8, 2019 The Florida Constitution currently provides that the term of the justice or judge retained in a retention election shall commence on the first Tuesday after the first Monday in January following the general election.<sup>1</sup>

Whenever a vacancy occurs in a judicial office to which election for retention applies, the governor shall fill the vacancy by appointing for a term ending on the first Tuesday after

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<sup>1</sup> Fla. Const. Art. V, § 10.

the first Monday in January of the year following the next general election occurring at least one year after the date of appointment.<sup>2</sup>

The governor's term also ends beginning on the first Tuesday after the first Monday in January of the succeeding year of the state wide general election.<sup>3</sup> There have been instances where this constitutionally mandated timing has led to a question as to whether the incoming or incumbent governor has the power to appoint a justice or judge whose term is coming to an end at the same time as the incumbent governor's term.<sup>4</sup>

**B. EFFECT OF PROPOSED CHANGES:**

The proposed amendment will end the question as to whether the incoming or incumbent governor has the power to appoint a justice or judge whose term is coming to an end at the same time as the incumbent governor's term and clarify that it is the incumbent governor that makes the selection. This proposal is prospective and will not affect any current case or controversy and is effective on January 8, 2019.<sup>5</sup>

**C. FISCAL IMPACT:**

None.

**III. Additional Information:**

**A. Statement of Changes:**

(Summarizing differences between the current version and the prior version of the proposal.)

None.

**B. Amendments:**

None.

**C. Technical Deficiencies:**

None.

**D. Related Issues:**

None.

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<sup>2</sup> Fla. Const. Art. V, § 11.

<sup>3</sup> Fla. Const. Art. IV, § 5.

<sup>4</sup> See the appointment of Justice Peggy Quince signed by both Incumbent governor Buddy McKay and incoming governor Jeb Bush on file with CRC staff.

<sup>5</sup> Fla. Const. Art. XI, § 5.