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# A Constitutional Amendment to Reform Kentucky's Courts

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## Chapter Two

# A CONSTITUTIONAL AMENDMENT TO REFORM KENTUCKY'S COURTS

Kurt X. Metzmeier

### **Introduction**

Responding to a confused patchwork of trial courts with overlapping jurisdiction, uneven justice around the state, and a growing backlog of appellate cases, voters in Kentucky went to the polls on November 4, 1975, to approve a sweeping constitutional amendment that radically revised Kentucky's court system. Although reformers had decried Kentucky's confusing court system since the 1940s, the real roots of the revision of the judicial article can be found in the failed movement in the late 1960s to replace Kentucky's 1891 constitution. Unbowed by the defeat, judicial reformers immediately set out to pass a separate amendment reforming the courts, taking care to involve the public and thus create a document that was progressive but also capable of being approved by the voters. In doing so, painful compromises were made but not so many as to detract from the revolutionary impact on the commonwealth's legal system.

**C**riticism of the system of courts devised by the 1890 convention began almost as soon as the ink dried on the new charter. In 1924, a blue-ribbon committee analyzing the efficiency of Kentucky governmental institutions found an "overworked" court of appeals that was more than two years behind the trial courts. The panel's report also noted poor judicial pay throughout the system; a lack of uniformity in the work of the circuit courts; "innumerable specific defects" in the inferior trial courts caused by non-lawyer judges; an overly politicized county judge with both judicial and administrative duties; and a decentralized and thus unsupervised system of lower courts. High among the Efficiency Commission's recommendations was a plea for a unified system of courts.<sup>1</sup>

In the 1940s a number of efforts by idealistic, postwar reformers seeking to revise Kentucky's political system (and constitution), turned a critical eye on the courts. In its 1946 Report on the Constitution, the Committee for Kentucky noted the crisis at the appellate level, urging an intermediate court of appeals.<sup>2</sup> The 1924 Efficiency Commission had discussed and rejected this option, recommending more commissioners, but the postwar reformers called that a "subterfuge" that had failed to solve the problem. The report also criticized the constitution's salary restraints and its limitations on the legislature's power to reorganize the courts. In the late 1950s, the General Assembly's Legislative Research Commission published a series of studies that provided statistical grounding for many of the problems of the state's court system.<sup>3</sup>

## The 1966 Constitution

As the 1960s dawned, a general consensus had crystallized concerning the key problems of the Kentucky system of justice. First, the Court of Appeals was overworked and the constitutional expedient of creating three commissioners had not fixed the problem. Yet as the decade began, the court and its commissioners were typically writing around 900 opinions a year, placing the relatively small state regularly in the nation's top three in the number of decisions issued.<sup>4</sup> Moreover, parties in civil cases regularly complained that it took too long for the overburdened Court of Appeals to decide their case on appeal.<sup>5</sup>

Because some, but not all, circuit courts were similarly overworked, an uneven standard of efficient justice existed throughout the state. Populous urban areas, especially Jefferson and Fayette Counties, were particularly stressed, but some rural areas, especially in rugged Eastern Kentucky, also faced backlogs.<sup>6</sup>

Finally, it was widely acknowledged that the motley mix of inferior courts—often with overlapping jurisdictions and presided over by non-lawyers—was inefficient, overpoliticized, and generally unable to provide a uniform standard of justice. The political nature of the lower courts was regularly criticized by reformers. The political power of the county judgeship, which the constitution had encouraged by giving the office both judicial and administrative duties, placed its holder at the apex of the "courthouse gang," which often controlled politics and patronage in both rural and urban counties. Garnering support from these local kingpins was crucial to any successful statewide campaign, and the county judges routinely dispensed jobs, fixed speeding tickets and slotted rising young politicians onto the gang's slate for the next election. Often the first job of these new politicians was a municipal or police court judgeship for which they had been put on the ticket in reward for good service by them or their family. Polls would later show that the inefficiency and perceived unfairness of

the lower courts did the most to bring down the public's opinion of the court system in general.<sup>7</sup>

The issue of court reform was one of the pillars of the 1966 campaign to replace the state's antiquated constitution, although by no means the only one. After unsuccessful bids to call a constitutional convention in 1931, 1947 and 1960, in 1964 the legislature creatively interpreted Section 4 of the constitution that gave the people the "right to alter, reform or abolish their government in a manner they deem proper" as legal justification for it to create a Constitutional Revision Assembly to draft a new constitution.<sup>8</sup> The Revision Assembly drafted a new judicial article that, with one major exception, was very similar to one later adopted by the electorate in 1975. The 1966 draft constitution envisioned a four-tiered, unified court system headed by a supreme court, with an intermediate appellate court of appeals, and two trial courts—the circuit courts, to handle felonies and civil cases with higher amounts in controversy, and the district courts, designed to adjudicate misdemeanors and civil cases with more modest amounts in dispute. The proposed court system abolished the justices' courts, police courts and quarterly courts, and stripped the county judge of judicial duties. Most radically, the plan eliminated elections for many judges, proposing instead that all appellate judges and those circuit judges in districts with a population of more than 50,000 be appointed by the governor from a list provided by a nominating commission.<sup>9</sup> These judges would only face periodic elections where the voters would decide whether or not to retain the judge.

After weathering a legal challenge to its unorthodox origin,<sup>10</sup> the draft constitution was placed on the ballot. Weighed down with many unpopular provisions—including a section abolishing many of the state's 120 counties (and their respective county officials)—the 1966 constitution was soundly defeated at the polls. While supporters of the new constitution had to convince voters to accept all of its provisions, opponents only had to raise doubts about any single provision to secure a "no" vote.

Nevertheless, despite their unfortunate end, the judicial reforms in the 1966 revised constitution were thought to be so important that plans to bring them forward as a separate constitutional amendment began almost immediately, spurred by the resolve of the Kentucky Bar Association (KBA). In June 1968, the KBA, in conjunction with the American Judicature Society, held a Citizens Conference on Kentucky State Courts that encouraged the KBA to draft a judicial article bill for the legislature.<sup>11</sup> In 1972, a court reform bill (based heavily on the judicial article from the 1966 constitution) was introduced to the General Assembly.<sup>12</sup> Although the bill was defeated by supporters of the existing trial judges, the idea of a wholesale reform of the courts by a single amendment would return in the next session of the legislature.

## The Renewed Push Towards Judicial Reform

Although a cast of hundreds were involved in the campaign to reform Kentucky's judicial system, three were instrumental to the final successful push toward victory: Morton J. Holbrook, Jr., James G. Amato and Nancy Lancaster. Holbrook, a Harvard Law School graduate who shunned Wall Street offers to return to his native Western Kentucky, played a key role by coordinating the work of the various reform groups as head of the Ad Hoc Drafting Committee. Amato, a former municipal judge who in 1973 came within 54 votes of becoming the first mayor of Lexington's unified city-county government, brought his considerable political savvy to the 1974-75 campaign to convince Kentucky voters to pass the judicial amendment and in doing so surprised politicians and observers who thought this impossible. Amato's deputy, Nancy Lancaster, worked tirelessly for the reform movement using her considerable personal knowledge of the members of the judiciary, the legislature and state government to help the reformers "get the things that needed done get done."<sup>13</sup> After the judicial article was approved, she joined the staff of the state law library, taking care to preserve the key documents of the reform movement.

Others who lent their energy to the campaign included Franklin Circuit Judge Henry Meigs II and University of Kentucky law professor Amos H. Eblen, both of whom labored for years for judicial reform before joining Holbrook as members of the board of the chief organ of the reform movement, the Kentucky Citizens for Judicial Improvement. In Louisville, bar leader L. Stanley Chauvin Jr., who would go on the head the American Bar Association, was unstinting in his support for reform, both as president of the Louisville Bar Association in 1972 and later as a board member of the American Judicature Society and as a campaigner in the 1975 election. Kentucky Bar Association presidents, William E. Rummage (1973), Glenn W. Denham (1974) and Henry D. Stratton (1975) also played key roles in the campaign. John S. Palmore, chief justice of the Court of Appeals in 1973, should not be ignored, even though he disclaims a major role. He attended many of the early strategy meetings and recruited many titans to the movement, including the late Wilson W. Wyatt, whose work was critical in the campaign to get the electorate's approval of the judicial article.<sup>14</sup> These were people of enormous drive and confidence, yet they worked with a rare unity of purpose for a Kentucky political enterprise.



*Justice John S. Palmore*

The year 1973 saw the campaign reform gather strength. Governor Wendell H. Ford created a Governor's Judicial Advisory Committee by executive order.<sup>15</sup> The KBA's



*Justice John S. Palmore witnesses Governor Wendell H. Ford signing the invitations to the Citizens Conference for Judicial Improvement, October 29, 1973.*

Judicial Article Committee continued its work, while the Kentucky Crime Commission, the Court of Appeals and the General Assembly all had committees investigating court reform. To unify their efforts, the leaders of these groups formed the Ad Hoc Drafting Committee, recruiting the able Morton Holbrook as its leader. The committee harnessed the state's legal minds in an effort to refine a judicial article to place before the 1974 session of the General Assembly.

The failure of the 1966 constitution was a stark lesson to reformers that the success

of the judicial article depended on a well-organized and vigorous campaign that actively engaged the citizens in the process and that produced a proposal that could win at the polls. To organize such a campaign, the Kentucky Citizens for Judicial Improvement (KCJI) was incorporated in the summer of 1973. The nonprofit group set out to educate Kentuckians about the benefits of judicial reform, while at the same time gauging the support for reform among ordinary people and incorporating those findings into drafting a new article that could make it through the 1974 General Assembly and be approved on the ballot.<sup>16</sup> Funding for the KCJI was through a grant obtained through the Kentucky Crime Commission, with an initial award of \$118,511 in 1973, and another \$165,000 in 1974 and 1975.<sup>17</sup> One of the grant's terms was that the funds were not to be used for political activity, a line that the KCJI skirted close to at times.<sup>18</sup> L. Paul Haynes was hired to head the KCJI, but the group's activities were overseen by a board made up of Holbrook, Franklin Circuit Judge Henry Meigs II and University of Kentucky law professor Amos H. Eblen.<sup>19</sup>

The KCJI kicked off its plans with the first of many conferences designed to involve the public in a process that up to then had been primarily the interest of the bench and bar. The Public Conference on the Proposed Kentucky Judicial Article convened in Louisville on September 25 with a panel of five experts who drew comments on the current draft of the proposed judicial article from the approximately 100 participants.<sup>20</sup>

Later that year, an even more ambitious program was held in Lexington. From November 29 through December 1, the Kentucky Citizens' Conference for Judicial Improvement met to discuss judicial reform. Sponsored by the KCJI, the KBA, the

American Judicature Society, the Kentucky League of Women Voters, and several Kentucky judges' associations, the program included several prominent national leaders among its speakers, including retired U. S. Supreme Court Justice Tom C. Clark, Glenn R. Winters, executive director of the American Judicature Society, and Colorado Supreme Court Justice William H. Erikson. The conference saw a detailed presentation of the draft article by Holbrook and Amato on the first day; later sessions reviewed reforms around the country.<sup>21</sup> Helping preside over the conference was Margaret Schwert, president of the Kentucky League of Women Voters, which in April had placed judicial reform at the top of its agenda.<sup>22</sup>



**Tom C. Clark**

While the judiciary conferences gave the reform effort good press and created the sense that the public was being included in the reform process, the KCJI's best decision was to use some of the grant funds to commission a poll to find out what Kentuckians actually thought about their state judicial system. The John C. Kraft Inc. polling firm, which had been employed by Governor Ford in his primary race against former Governor Bert T. Combs, was hired to survey the attitudes of Kentuckians about the state judicial system and judicial reform.<sup>23</sup> In contrast to the failed 1966 constitutional campaign, with regular polling the judicial reformers of 1973-75 were not flying blind. In late 1973, the Kraft firm took representative samples of all demographic and geographic groups for a major baseline poll. When the results were complete, they showed general support for court reform, but not exactly in the same ways proposed in the draft article. The survey did show strong support for judges being licensed attorneys and for an intermediate court of appeals, two planks of the draft judicial article. The survey found some support for the draft article's proposal to strip judicial duties from county judges and for the creation of a simplified system of full-time inferior court judges.<sup>24</sup>

However, the poll found that the public had little enthusiasm for the notion of appointing judges, with 65 per cent supporting elected judges. The results led to a momentous decision. On December 24, Holbrook told a UPI reporter that in response to the poll, the proposed article would be changed to retain judicial elections.<sup>25</sup> As Holbrook told an audience at Eastern Kentucky University in 2000, pollster Fran Kraft had convinced KCJI's members that to ultimately succeed in their efforts, they needed to drop any proposal opposed by over 65 per cent of the persons surveyed. The drafters dropped a number of provisions that failed to meet this test.<sup>26</sup> However, the bow to public opinion was a blow to some reformers; after all, the removal of the state judiciary from elective politics had been a goal of many since the 1940s. But most agreed that the court system needed reform in many areas and even the *Courier-Journal* editorial board, which was one of the staunchest supporters of appointing judges, finally agreed

a “diluted” reform was better than none.<sup>27</sup>

In January 1974, Holbrook, the KCJI and the other supporters of reform hammered out a judicial article amendment bill to present to the legislature. Like prior drafts, the bill envisioned a four-tiered court structure with the Supreme Court at its head, with a new intermediate Court of Appeals and two trial courts: the current Circuit Court for felonies and major civil cases and new District Courts for misdemeanors and lesser civil matters. A state-funded unified Court of Justice, headed by the Chief Justice of the Supreme Court, would administer the judicial branch, which would have the right to set rules and procedures (in 1974, this right rested with the legislature). A Judicial Retirement and Removal Commission would be created to discipline judges. In deference to the opinion of Kentuckians revealed in the Kraft polls, judges would continue to be elected, but would do so in non-partisan elections. The Judicial Nominating Committee was retained only to guide the governor in filling vacancies. Another change was a new provision for trial commissioners for counties not allocated a district judge.<sup>28</sup>



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## The Legislature Takes Up Reform

The General Assembly that took up judicial reform in early 1974 was in many ways an institution in transition. By no means the independent body it would become by the end of the decade, it was no longer the mere rubberstamp for the governor that it had been for much of the twentieth century. It had reformed its committee structure, and in 1968 it had created interim committees to keep its hand in policy in the long stretches between its biennial sessions.<sup>29</sup> The legislature had many important matters before it that year. The energy crisis wracking the nation was hurting state revenues, and a tight budget was expected. With the Watergate affair in full bloom in Washington, legislators were under pressure to tighten campaign spending laws and open up the processes of government to the public eye. An attempt to pass the (then) controversial no-fault automobile insurance law would once again take center stage, while offstage rumblings over the upcoming governor’s race were a backdrop to the body’s deliberations. In the legal arena, the judicial article would share attention with a comprehensive bill to rewrite the state’s penal code.<sup>30</sup>

The radical overhaul of the state's judicial system sparked little excitement when Chief Justice Earl T. Osborne unveiled the judicial article bill on January 31.<sup>31</sup> The announcement met general approval in the legislature, with Rep. Frank X. Quickert, Jr. (D-Louisville), the chair of the House Judiciary Committee, and Rep. Bobby Richardson (D-Glasgow) commenting favorably on the measure in the press. More importantly, Governor Ford indicated his support. On February 4, the bill was formally introduced as Senate Bill 183 by Sen. William Sullivan (D-Henderson),<sup>32</sup> a member of the Elections and Constitution Amendments Committee to which the bill was referred.<sup>33</sup> After a few technical amendments,<sup>34</sup> the committee reported SB 183 to the floor,<sup>35</sup> which adopted it on a 25-13 vote that barely met the constitution's requirement of a three-fifths majority to put a constitutional amendment on the ballot.<sup>36</sup>

When the House received the bill on March 8, the close vote in the Senate put a rest to any discussion of easy success.<sup>37</sup> It was referred to the Elections and Constitution Amendments Committee,<sup>38</sup> then chaired by Rep. Lloyd Edward Clapp (D-Wingo), who was thought to support the bill. The committee took up the matter on March 11. Clapp joined a one-vote majority to report it favorably to the floor. The committee then took up a controversial bill to rescind the legislature's 1972 ratification of the Equal Rights Amendment (ERA) The measure, which wrote gender equality into the U.S. Constitution, was strongly opposed by many Kentuckians. After failing to garner enough votes on the ERA rescission bill, Clapp called for reconsideration of SB-183. Switching his vote, Clapp bottled up the reform bill in committee.<sup>39</sup> Pro court reform supporters Richardson and Rep. Nicholas Kafoglis (D-Bowling Green) reacted angrily to the maneuver, but by the next day a compromise was struck and both bills were reported to the floor.<sup>40</sup> Perhaps to the pleasure of Kafoglis, who supported the ERA as much as court reform, the anti-ERA measure died on the floor, while on March 15, the House passed the court reform bill by a 79-4 margin that more than met the three-fifths requirement.<sup>41</sup> Governor Ford signed the bill into law on March 20.<sup>42</sup>

## Winning Voters to the Idea of Reform

The bill was to be placed on the ballot on November 4, 1975, giving the reform proponents nineteen months to convince Kentucky voters—who were by nature cautious of constitutional amendments—that changing Kentucky's 85-year-old judicial system was a necessity. Many legislative observers gave the measure little hope of passing, and several expressed the thought that the legislature only passed the amendment bill because it was confident it would fail at the ballot.<sup>43</sup> The legislature had given supporters one additional gift. Kentucky's constitution allowed only two amendments on the ballot, and the conventional wisdom was that one unpopular measure would drag down the other as voters would simply vote "no" to both to avoid accidentally

voting for the “bad” amendment. However, the other amendment in 1975 would be a popular measure that extended the homestead tax break for persons over the age of 65. However, what would really overturn expectations would be the strong, well-organized campaign by the KCJI and its allies.

Informed by the Kraft polling information, the supporters of the campaign were more confident as to their chances than the pundits. The KCJI, along with the KBA, planned an extensive educational campaign, culminating in a more extensive push in the last months before the election. One early measure by the KCJI was to replace Paul Haynes with the more politically sophisticated James G. Amato as director of the organization. Having run political campaigns, Amato was better prepared to lead the group in the judicial reform movement’s electoral phase.<sup>44</sup>

The group created a speakers’ bureau of over 200 lawyers, judges and civic leaders, prepared to fan out throughout the commonwealth explaining the benefits of reforming Kentucky’s judicial system. Information kits that focused on the concerns of Kentuckians highlighted in the Kraft polls were printed and distributed around the state.<sup>45</sup> The KCJI focused significant attention on colleges and universities, especially Kentucky’s three law schools. Every state campus saw at least one program on the judicial article, and the KCJI recruited student leaders into their campaign to write articles and editorials in student papers. One especially promising first-year law student at the University of Kentucky, future U.S. District Court Judge John G. Heyburn II, penned a commentary for the *Kentucky Kernel*.<sup>46</sup>

## For most, day in court is unpleasant

*Kentucky Kernel*  
March 6, 1974

**Writer's Note:** Senate Bill 150 proposes an amendment to the Constitution of Kentucky relating to the Judicial Branch of Government. This is the first of two articles explaining the provisions of the amendment.

By JOHN G. HEYBURN

For the average citizen, to be in court is to be in some sort of unpleasant circumstance. Most prefer to forget the unpleasant in the hope they will never be harassed again. Too many of us forget that the judicial process continues inconspicuously, adjudicating our differences, protecting our rights and maintaining the foundation of an orderly society.

Unfortunately for Kentuckians, each state clerk and the efforts of our most capable public servants are increasingly frustrated by an 18th State Constitution which has proven overly restrictive and clearly inadequate to meet today's needs.

**THE RESULT** is a system which too often provides inadequate justice. Justice is inadequate when cases languish three years before decision by the Court of Appeals; when uncoordinated judicial branches proliferate into combining and overlapping jurisdictions; whenever political connections rather than professional qualifications select our judges.

The proposed Judicial Amendment is a much needed step in the right direction. It provides for a unified four-tiered court system with provisions for the non-party election of judges as well as a merit selection plan to fill vacancies. Similar reforms have been adopted by over half the states in the nation.

The Kentucky Plan provides for:

**A FOUR-TIERED court system.** The state Court of Justice would be divided into the Supreme Court, the Court of Appeals, the Circuit and District Courts. The state's highest court would be renamed the Supreme Court and a new intermediate Court of Appeals consisting of 14 Justices working in not less than three judge panels would be created. At present the state's highest court must devote far too much time to inconsequential and routine appeals, while houses which shape our Common Law decisions and cases of true Constitutional significance are delayed or too hastily decided.

The new intermediate court would relieve the Supreme Court of its present overload which has spawned a backlog of over 1,000 cases and would reduce the current three year delay on decisions for most appeals. Most importantly, the new Court of Appeals would provide for every citizen his right to a speedy and well considered appeal.

The Circuit and District Courts are the "workhorses of the system" where over 90 per cent of the state's legal issues begin and end, and where most citizens have contact with the judiciary. For this reason they are perhaps our most important courts. The present system of trial courts needs to be restructured in order to function more efficiently and fairly.

**THE CIRCUIT COURT** would retain original trial jurisdiction for all actions not limited to the District Courts, and would acquire appellate jurisdiction as provided by the Supreme Court.

**District Courts** would have original trial jurisdiction over less serious civil and criminal actions. The overlapping county courts such as the Justice of the Peace Courts, the Probate Courts, the Police Courts, the Quorums Courts, the Juvenile Courts, the Courts of Inquiry, and the Magisterial Courts would be reorganized within the District Courts. In each Judicial Circuit and District the Court would select a Chief Judge to efficiently administer the Court's business. All local judges would retain their positions within a more efficient judicial structure. County judges would retain their administrative func-

tions, giving up only their judicial duties. No county would be deprived of a resident District Judge under the new Amendment.

**A unified court system.** Kentucky's judicial system is a conglomeration of courts over which very little quality control can be exerted. The entire state judiciary receives less than one tenth of 1 per cent of the total state budget. The Judicial Amendment establishes a state funded Court of Justice and gives the Chief Justice of the Supreme Court authority and power to administer the entire system.

The Chief Justice could establish uniform rules of procedure, take measures to reduce overburdened courts, and appoint a state court administrator to insure greater efficiency throughout the court facilities. Most importantly, he would submit to the General Assembly a budget for the entire Court of Justice to provide every county with proper funding for its local courts. The unified court system would insure equal quality of justice throughout the Commonwealth.

John G. Heyburn is a first year law student and a member of the Ad Hoc Committee, Kentucky Citizen's Conference for Judicial Improvement.

The bulk of the members of the speakers' bureau were lawyers associated with the KBA, which labored mightily to pass the judicial reforms for which it had worked for decades. The group set up a statewide network to support the effort with representatives designated as Judicial Article Chairman for each of Kentucky's 120 counties.<sup>47</sup> The KBA's Young Lawyer Section (perhaps the most reformist sector of the bar association) sent copies of the judicial article to 1,600 newer bar members.<sup>48</sup> The KBA also rallied support for the measure in its publications.

The biggest push began in the summer before the 1975 election; the KCJI sponsored a series of seminars on the proposed amendment. Starting June 5, at the Chase College of Law at Northern Kentucky University and continuing in Louisville on June 25, Jim Amato and Becky Broaddus, a Madisonville attorney and educator, held public programs on the judicial article around the state. Panels were organized at Cumberland Falls, Jenny Wiley and Lake Barkley State Parks, as well as at Western Kentucky University in Bowling Green and Transylvania University in Lexington. Although somewhat sparsely attended, the conferences drew the attention of the local press which—when not noting how “strikingly attractive” Broaddus was—filed stories that repeated the speakers' concerns with problems in Kentucky's judicial system and their description of how the proposed constitutional amendment would solve these problems.<sup>49</sup>

Another part of the campaign was securing endorsements from Kentucky's social and economic organizations. Joining with the KBA and the Kentucky League of Women Voters (who had been onboard from the very start), nearly two dozen major groups signed on, including the Kentucky Chambers of Commerce, the Junior Chamber of Commerce, the Kentucky Council of Churches, the Kentucky Chiefs of Police, the Kentucky Peace Officers Association, the Kentucky Judicial Conference, the Kentucky Shorthand Reporters Association, the Kentucky Municipal League, the Louisville and Lexington Chapters of the Junior League, and the Louisville Chapter of the National Council of Jewish Women.<sup>50</sup> In addition, all the state's major newspapers and broadcasters endorsed the judicial article amendment, as well as many smaller papers.<sup>51</sup> Another boost came when gubernatorial candidates Julian Carroll and Bob Gable jointly endorsed the court reform amendment.<sup>52</sup>

As election day loomed, the KCJI realized that the success of the judicial amendment required an organization that was unfettered by the legal restrictions on campaign financing and advertising that it, itself, was subject to because of its acceptance of federal grants. A group headed by Justice Palmore was dispatched to Louisville to meet with Wilson W. Wyatt to convince him to join Judge Meigs in co-chairing the new Kentuckians for Court Modernization.<sup>53</sup> Wyatt, who had served as Louisville mayor and as lieutenant-governor and had ties around the country because of his association with the Americans for Democratic Action, was a major addition to the campaign.<sup>54</sup> Drawing on his national ties, Wyatt brought onboard talented professionals who created

a clever and effective advertising campaign.<sup>55</sup> One memorable ad used the slogan “You can take the law into your own hands,” and was believed to be particularly effective in Louisville where anger over U.S. District Court Judge James Gordon’s court-ordered busing ran high.<sup>56</sup>

Despite the considerable organization of the campaign for the judicial article amendment, opponents did not respond with a similar effort, likely because they were lulled by the firm belief that the measure was doomed to fail.<sup>57</sup> The chief organization of opposition was the Kentucky Association of County Judges, headed by Pike County Judge Wayne T. Rutherford. The group, composed of officials slated to lose some of their powers under the judicial reform, voted to oppose the amendment.<sup>58</sup> While individual judges worked against the amendment in their counties, there was no statewide campaign. Up to the very end, Rutherford and his fellow judges believed the vote would go their way no matter what the reformers did.<sup>59</sup>

The supporters of the amendment had an “ace up their sleeve.” The KCJI had continued polling, and from the survey data and their understanding of the opposition they had a winning strategy. So long as they could break even or lose moderately in the rural counties, they believed that they could run up large enough margins in the urban counties to win.<sup>60</sup> The last Kraft poll, which was kept secret, predicted that “the Judicial Article is a winner.”<sup>61</sup>

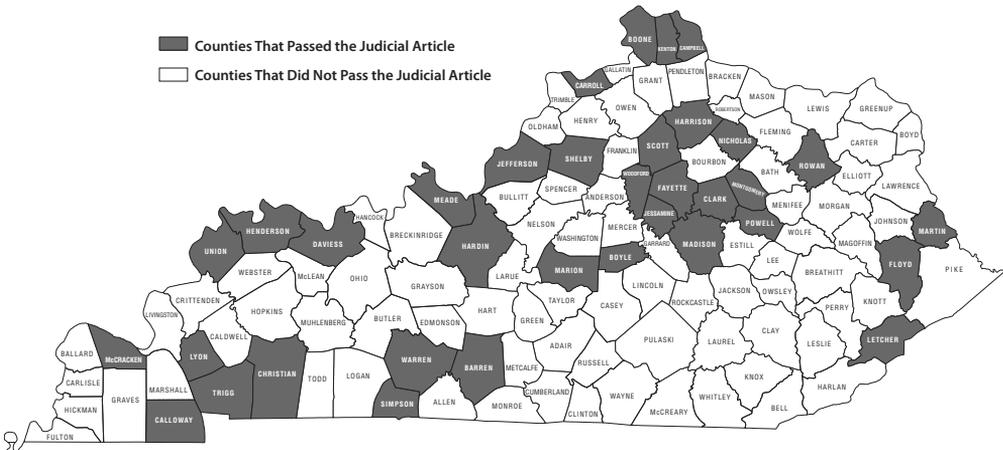
## The People Speak

The judicial article was not the only matter on the ballot as Kentuckians went to the polls on a cloudy, rainy November 4, 1975. Julian Carroll, who as lieutenant governor had taken office as governor in 1974 when Wendell H. Ford was elected to the United States Senate, was up for election on his own right, running hard against Republican Bob Gable. All the state constitutional offices were in play, with an interesting race between Lexington Democrat Robert F. Stephens and Leitchfield Republican Joe Whittle for attorney general drawing the most attention.<sup>62</sup> There were several contested seats for the state senate and house of representatives on the ballot, as well as elections for local offices around the state, including the first election for members of the city council of the new Lexington-Fayette Urban-County Government. In the race for clerk of the Court of Appeals, two newcomers, Versailles’ Martha Layne Collins and Mount Vernon’s Joseph E. Lambert vied for the first rung on the political ladder that would eventually take one to the governor’s mansion and the other to the chief justice’s chair.<sup>63</sup> In Louisville, where most of the reform movement’s hopes for victory rested, the *Courier-Journal’s* headline blared the news of the previous night’s anti-busing rioting.<sup>64</sup>

As the polls closed, the supporters of “Constitutional Amendment #1” drew some comfort from the good turnout in Louisville, and as returns came in they had more reason to take heart. The measure’s “running mate,” the homestead exemption amendment was winning easily, and by the time the state’s newspapers went to press, it was apparent that the judicial article amendment had passed.

The final vote showed that the amendment had garnered 395,543 “yes” votes against 215,419 “no” votes, a solid 54 per cent victory. The amendment won only 35 of the 120 counties, but it racked up big margins in the populous urban counties it won. Jefferson County provided a margin of 39,205 votes joined by Lexington-Fayette’s 11,532. Margins of 3,523 in Paducah’s McCracken County, 2,348 in Owensboro’s Daviess County, 2,162 in Bowling Green’s Warren County, and a total of 6,034 in the northern Kentucky counties of Boone, Campbell and Kenton. The winning margin in the “no” counties was often only in the hundreds, with Wayne Rutherford’s Pike County’s margin of 1,735 among the highest.

**PASSAGE OF THE 1976 JUDICIAL ARTICLE**



Speaking to reporters in Lexington the day after the amendment passed, a jubilant Amato gave the Kentucky press’s uniform support credit for the win.<sup>65</sup> Reflecting 25 years later, he and Holbrook chalked the victory up to a number of factors. The opposition’s overconfidence was a major factor which, combined with the results the KCJI was receiving from its polling, allowed the campaign to pursue a “rope-a-dope” strategy of breaking even in the rural counties, while racking up large margins in the cities.<sup>66</sup> The well-organized campaign was also a big factor, along with Wyatt’s masterful advertising campaign in Louisville. The unity of the bench and bar, as well as among business, church and social groups also helped, as did the decision of the gubernatorial candidates to jointly endorse the amendment. Both Amato and Holbrook rightly gave

a nod to good luck; the rainy day drove up turnout in Western Kentucky<sup>67</sup> where the measure was popular, just as the busing controversy did in Louisville.<sup>68</sup>

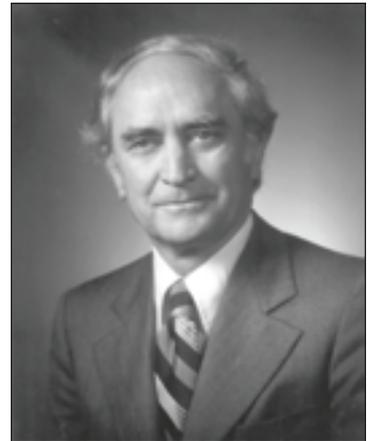
The approval of a constitutional amendment replacing the 1891’s “horse-and-buggy” judicial system with a modern unified court system was a cause for progressive-thinking Kentuckians to break open the champagne. However, as a sober *Courier-Journal* editorial noted two days after the election, “court reform has only begun.”



## Leading Figures In the Judicial Article Campaign

Morton J. Holbrook, Jr.

Born on September 15, 1914, in Whitesville, Kentucky, Holbrook graduated from the University of Kentucky before receiving his law degree from Harvard Law School in 1938. He returned to Owensboro to start a very successful practice that was briefly interrupted by his service in World War II. In 1967, Holbrook was named Outstanding Lawyer of the Year by the Kentucky Bar Association partially in recognition of his work in the lawsuit defending the constitutionality of the method the Kentucky General Assembly used to put the unsuccessful 1966 constitution before the voters. He was prominent in judicial reform, chairing the Ad Hoc Drafting Committee.



Holbrook served as a Fellow of the American College of Trial Lawyers, delegate to the Judicial Conference for Federal Judges of the Sixth District, and as a member of the American Judicature Society and the Center for World Peace Through Law. In 1975, the University of Kentucky named him to the Hall of Distinguished Alumni and in 2004 the Daviess Fiscal Court officially renamed Owensboro’s courthouse the Morton J. Holbrook Jr. Judicial Center. Holbrook died at age 91 in his native Owensboro on August 25, 2006. Newspapers around the state eulogized him as the father of judicial reform.

## James G. Amato

Born in Lexington in 1933, James G. Amato attended Transylvania University, graduating in 1958 with a double-major in History and Political Science. He was admitted to the Kentucky bar in 1964 after receiving a J.D. from the University of Kentucky College of Law.



From 1966 until 1970, Amato served as a city prosecutor in Lexington; in 1970 he was elected municipal judge and served through 1974 when he resigned to run for mayor of the new Lexington-Fayette Urban-County Government. In 1975 he was hired as director of Kentucky Citizens for Judicial Improvement. After running the successful campaign for ratification of the judicial article, Amato was elected mayor of Lexington in 1978. After the end of his service in 1982, he returned to private practice. In 1990 he joined the firm in which he is now a member, McBrayer, McGinnis, Leslie & Kirkland, PLLC.

## Nancy Lancaster

Born in 1931 in Grayson County, Nancy Lee Shofner Lancaster attended Berea College and the University of South Carolina. She started her long association with the Kentucky court system in 1968 when she joined the staff of Clerk of the Court of Appeals Dick Vermillion. In 1972, she was hired as an executive assistant for the Kentucky Citizens for Judicial Improvement. After the success of the 1975 Judicial Article, she joined the new Administrative Office of the Courts. While at the court, she wrote an insider's history of the judicial reform campaign that was first published in the AOC's *Accent on the Courts*, but later revised and published in the 1985-86 annual report of the Court of Justice.



She died in Frankfort in 1995. In a fitting tribute to her long role in the improvement of the courts, her pall bearers included five judges, including former chief justice John S. Palmore, and the sitting chief justice, Robert Stephens. ❁