



Kansas General Election Ballot, Constitutional Amendments

The Kansas Constitution was adopted on January 29, 1861. It has been amended 98 times with the most recent amendment being adopted in 2019 when voters approved a measure to end the practice of adjusting the state's census population for legislative redistricting. In 2022, voters will have the chance to vote on a total of three constitutional amendments. In Kansas, citizens do not have the power to initiate statewide initiatives or referendums. The state legislature can refer statewide ballot measures in the form of a constitutional amendment to the ballot. An amendment requires a two-thirds vote in the House (84 votes) and Senate (27 votes) during a single legislative session to refer a constitutional amendment to a statewide election ballot. The governor's signature or approval is not required for the initiative or referendum to be referred to the ballot.

In August, Kansas voters defeated a proposed constitutional amendment that would have stricken the right to obtain an abortion and allowed the legislature the authority to enact statutes to further regulate abortion. In November, Kansans will once again have the opportunity to amend the constitution when they vote on two House Concurrent Resolutions – [HCR 5014](#) and [HCR 5022](#). While the proposed amendments have not generated the same level of interest as the August abortion amendment, if adopted, they will have a substantial change on Kansas government. The first ballot question concerns the executive power historically held by the governor and the second concerns the election and removal of county sheriffs.

HCR 5014: Legislative Powers Amendment.

If approved by voters, HCR 5014 would amend the constitution to create a new Section in Article 1 concerning legislative oversight of administrative regulations.

Under the Kansas Constitution, the governor has administrative authority over regulations enacted by state agencies. The majority of agency heads are appointed by the governor with the exception of the Secretary of State, Attorney General, Treasurer, and Insurance Commissioner. Generally, administrative regulations are implemented to carry out the duties created by the legislature. In order to enact a regulation, a state agency must follow rule making procedures. First, the agency must complete a fiscal impact statement with detailed fiscal analysis. Second, the agency must obtain approval from the Kansas Department of Administration (KDA) regarding form, grammar, syntax, etc.; and third, they must obtain approval by the Attorney General Division of Logic regarding legality and to avoid agency overreach. The fourth step requires the agency appear before the Joint Committee on Rules and Regulations to defend the proposed regulation. The Joint Committee may make recommendations or challenge the proposed regulation; the Joint Committee, however, does not get to cast an up or down vote on the proposed regulation. If enacted, the only recourse available to the legislature is to pass a statute to repeal the regulation. The fifth and sixth steps in the rule making process require the agency conduct a public hearing and publish the final regulation in the Kansas Register. On average, it takes six to eight months to enact an administrative regulation, which will have the full force and effect of law.

HCR 5014 would give the legislature oversight power of the executive branch agencies by providing legislative authority to establish procedures to revoke or suspend agency regulations. While this may not appear problematic, it shifts the balance of power over state agencies from the executive branch to the legislative branch and it has the potential to put state agencies in legal limbo if the ability to carry out statutory responsibilities are stalled over political maneuvering. Opponents argue the necessary checks and balances of the executive and legislative branches will be compromised if the legislature has the authority to veto regulations enacted by agencies under control of the governor. Proponents of the proposed amendment argue the same premise, but with a different spin. Proponents argue limiting the governor's authority, especially when the governor is of a different party, limits the actions a governor can take. The proponents point to certain COVID-19 regulations adopted by the Kansas Department of Health and Environment and workers compensation regulations adopted by the Department of Labor that a majority of legislators were opposed to.

Enacting an administrative regulation is a tedious process that requires strict oversight by the KDA and the Attorney General. But the rule making processes are intended to act as safeguards to prevent agencies from creating laws with the stroke of a pen. Given that the rule making process does not involve committee hearings and floor debate, the scrutiny required to enact an administrative regulation is justifiable and reasonable. When Kansans vote in November, they will have the opportunity to decide if the rule making process is satisfactory as is, or if the legislature should shift the balance of power and have oversight of administrative regulations.

HCR 5022: Election of County Sheriffs.

If approved by the majority of voters, HCR 5022 would amend Article 8, Sections 2 and 5 of the Kansas Constitution to add language concerning the election of county sheriffs and removal of a sheriff from office. The proposed amendment would require the election of a county sheriff in counties that had not abolished the office of sheriff before January 11, 2022, and specify that a sheriff be elected for a term of four years. Currently, Riley County is the only Kansas county without a sheriff. The amendment would also specify that a county sheriff may only be involuntarily removed from office by a recall election pursuant to Article 4, Section 3 of the Kansas Constitution or a writ of *quo warranto* initiated by the Attorney General.

The issue of removal from office is in response to a discussion in Johnson County that manifested when Johnson County's home rule charter came up for its 10-year review and a charter commission member suggested making the sheriff position an appointed position as opposed to an elected position. Recently, the Johnson County sheriff was at the center of a public controversy where he launched an investigation into unsubstantiated claims of election fraud. Opponents of HCR 5022 claim the proposed amendment is a threat to the rule of law and it would permit a sheriff to interfere in county elections for county commissioners and other county wide elections. Opponents of the proposed amendment argue the county sheriff would be insulated from removal except by a recall election initiated by a voter petition with signatures equaling at least 40% of the votes of the most recent sheriff's election or an action by the Attorney General. The proposed amendment has not generated much attention outside of Johnson County but if it passes, it will affect all 105 Kansas counties.

The constitutional amendments on the ballot for the 2022 general election are not drawing national attention like the abortion amendment did during the primary election. But these amendments are important to Kansas government, and they could affect the balance of power in the state. Read the amendments in their entirety [here](#).

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