

1 A JOINT RESOLUTION declaring that the General Assembly has the sole
2 authority under Section 256 of the Constitution of Kentucky to determine the sufficiency
3 of ballot language for amendments to the Constitution.

4 WHEREAS, Section 27 of the Constitution of Kentucky divides the government of
5 Kentucky into three separate and distinct branches: legislative, judicial, and executive;
6 and

7 WHEREAS, Sections 28 of the Constitution specifies that one branch is not to
8 exercise the authority given to any of the other branches; and

9 WHEREAS, Section 256 of the Constitution sets out in detail the procedure for
10 amending the Constitution, and specifically states that "the vote to be taken thereon [the
11 proposed amendment shall be] in such manner as the General Assembly may provide;"
12 and

13 WHEREAS, since *Funk v. Fielder*, Ky., 243 S.W.2d 474 (1951), the Kentucky
14 courts have recognized the right of the General Assembly to formulate the question to the
15 voters for amendments to the Constitution. In this case, the Court of Appeals, then the
16 highest court in the state, opined that "if the question is not misleading or inconsistent and
17 reveals the essential character and purpose of the proposed amendment, it must be
18 deemed to meet the requirements of the Constitution and the statute." *Id.*, at 476; and

19 WHEREAS, the courts of the Commonwealth had for almost 70 years, in no less
20 than four cases and with not a single dissenting vote, likewise interpreted Section 256 of
21 the Constitution and recognized this power of the General Assembly; and

22 WHEREAS, in 1974 the General Assembly enacted KRS 118.415(1) which states
23 that "the General Assembly may state the substance of the amendment proposed to the
24 Constitution of Kentucky in the form of a question in a manner calculated to inform the
25 electorate of the substance of the amendment;" and

26 WHEREAS, in the past 50 years, 23 amendments to the Constitution have been
27 successfully submitted to the voters, 15 of which, including the judicial article creating

1 the current Kentucky Supreme Court, were submitted to voters on language provided by
2 the General Assembly; and

3 WHEREAS, the Kentucky Supreme Court, in *Westerfield v. Ward*, 2018-CA-
4 001510, 2019 WL 2463046, despite the plain words of the Constitution and 70 years of
5 settled law, usurped the purview of the General Assembly to frame an amendment
6 question when it stated that "we find it unimaginable that the Framers intended to grant
7 such broad authority over the process of modifying our organic document solely to the
8 General Assembly; and

9 WHEREAS, in the *Westerfield* opinion, the Kentucky Supreme Court, despite the
10 issue not being raised by any of the parties, required the full amendment to the
11 Constitution to be presented to the voters of Kentucky rather than a question formulated
12 by the General Assembly;

13 NOW, THEREFORE,

14 ***Be it resolved by the General Assembly of the Commonwealth of Kentucky:***

15 ➔Section 1. The power to determine the sufficiency of ballot language for
16 amendment to the Constitution of Kentucky rests with the General Assembly under
17 Section 256 of the Constitution.

18 ➔Section 2. The role of the Kentucky Supreme Court, since 1957, is to review the
19 ballot language to determine whether it accurately and fairly informs the voter of the
20 substance of the amendment.

21 ➔Section 3. The opinion of the Kentucky Supreme Court in *Westerfield v. Ward*,
22 *infra*, shall be the law of the case for that particular case or controversy only, and between
23 the parties thereto, and shall not be cited, followed, or enforced by the executive or
24 legislative branches of the government of Kentucky.