



Commonwealth of Kentucky  
Supreme Court  
No. 2026-SC-0122

Julie Muth Goodman, Judge

Movant

v.

**Memorandum of Amicus KACDL**

Hon. Jason Nemes, et al.

Respondent

**Certificate of Service**

This certifies that on March **27**, 2026, copies of this Memorandum were served on the following persons by mail.

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A handwritten signature in black ink, appearing to read "J. David Niehaus", written over a horizontal line.

J. David Niehaus, Counsel for KACDL

## Introduction

The General Assembly's authority to employ the Impeachment Article turns on the identity of the person(s) it wishes to impeach. Section 68 says that “[t]he Governor and all civil officers shall be liable for impeachment.”

As this Court has held in *Dunn v. Solomon Foundation, Inc.*, 723 S.W. 3d 711, 724 (Ky., 2025) and *Stivers v. Beshear*, 659 S.W. 3d 313, 318 (Ky., 2022), the words of the Constitution must be given their ordinary meaning and read in context with related Sections. Readers must presume that the words were chosen carefully so that no part of the Constitution will be meaningless or ineffective. And the Court must presume that a constitutional amendment is intended to repeal or modify any portion of the existing Constitution with which it conflicts. *Ward v. Harding*, 860 S.W. 2d 280, 282 (Ky., 1993); *Gatton v. Fiscal Court*, 184 S.W. 1, 3 (Ky., 1916).

To determine if a circuit judge is a “civil officer” within the meaning of Section 68, it is necessary to also consult the Judicial Article and Section 28. Doing so shows that the General Assembly has never, since the ratification of the Constitution in 1891, been assigned the duty of removing judges from office. This is likely why no circuit judge has ever been impeached since ratification in 1891.<sup>1</sup>

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<sup>1</sup> The Attorney General has cited to the impeachment of “Judge J.E. Williams.” J.E. Williams was a county judge executive of McCreary County. See <https://www.findagrave.com/41774498/joseph-edward-williams> (quoting obituary from *The Advocate-Messenger of Danville, Kentucky*).

## Argument

### *Removal of Judges 1891 to 1976*

As originally ratified by the voters in August, 1891, Sections 112 and 129 governed the removal of circuit judges from office. Section 112 provided that appellate judges could be removed by the Governor:

For any reasonable cause the Governor shall remove them, or any one or more of them, on address of two-thirds of each House of the General Assembly.

Section 129 stated that circuit judges “shall be removable in the same manner as the Judges of the Court of Appeals.”

The role of the General Assembly in the constitutional scheme was limited. “The cause or causes for which said removal shall be required shall be stated at length in such address and in the journal of each House.” But the Governor made the final decision: “[f]or any reasonable cause, the Governor shall remove them.” The Governor decided if there was “reasonable cause.” The function of the General Assembly under this scheme was to accuse.

Removal of address of judges was distinct from impeachment. Different sections of the Constitution of 1891 (66 through 68) related to the impeachment of the Governor and “civil officers.” The distinction between removal by address and impeachment is also reflected in KRS 63.020, formerly KS 2175. It provides that “[p]roceedings for impeachment or removal by address” may be instituted in either

House of the General Assembly. The disjunctive “or” means that impeachment and address are alternatives. They are not different names for the same process. The legislature itself has long recognized the distinction. The procedure for removal by address was set forth in a unique statute. *See* KRS 63.060.

#### *Removal of Judges, 1976 to the Present*

Section (1) of 1974 *Kentucky Acts* Ch. 84 proposed to amend the Constitution by repealing much of the existing Judicial Article. The sections repealed included the sections providing for the removal by address of judges. Chapter 84 enacted “in lieu thereof provisions to read, be numbered and be entitled as follows:”

Among the new Sections were 121 and 124. Section 121 established a Commission designed to operate independently of this Court. Any justice or judge can be “removed for good cause” by this Commission. To avoid arbitrary removal, Section 121 expressly holds that the Commission’s actions “shall be subject to judicial review by the Supreme Court.” In 1976, authority to “remove” was transferred from the Governor to the Commission.

#### *Primacy of Removal over Impeachment*

To preclude any doubt that the Judicial Reform Article was intended to prevail over any part of the existing Constitution, it also contained Section 124. This Section states that “[a]ny remaining sections of the Constitution of Kentucky

as it existed prior to the effective date of this amendment which are in conflict with the provisions of amended Sections 110 to 125 (sic) are repealed to the extent of the conflict.” Section 124 constitutionalizes the interpretive rule<sup>2</sup> that amendments supersede any parts of the existing Constitution with which they conflict.

The voters who were asked to ratify the Judicial Reform Article knew that they were agreeing to a new Judicial Department that included the power to remove judges. The ballot question presented to the voters on November 5, 1975,<sup>3</sup> asked if they were in favor of enacting new Sections that among other things provided for

eligibility, term of office, election, *removal*, filling of vacancies, prohibited activities, compensation, and retirement of judges of such courts.

(Emphasis added.) Their affirmative vote meant that they were in favor of keeping removal within the Judicial Department.

Against overwhelming evidence that judges can be removed only by the Judicial Conduct Commission, the only argument raised in favor of impeachment is the last sentence of Section 109. It reads: “The impeachment powers of the General Assembly shall remain inviolate.” This sentence does not provide the General Assembly with the power to impeach judges. Rather, it simply confirms

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<sup>2</sup> *Ward v. Harding*, 860 S.W. 2d 280 (Ky., 1993).

<sup>3</sup> Secretary of State Website – Election - Results -1975 Primary and General Election Results.

that the constitutional grant of all judicial power to the Judicial Department does not deprive the General Assembly of its traditional power to impeach. This is clear when comparing the previous formulation of Section 109 to its present form.

As proposed and ratified in 1891, Section 109 read

### **THE JUDICIAL DEPARTMENT**

Sec. 109. The judicial power of the Commonwealth, both as to matters of law and equity, shall be vested in the Senate when sitting as a court of impeachment, and one Supreme Court (to be styled the Court of Appeals) and the courts established by this Constitution.

As originally conceived, all judicial powers in the Commonwealth were reserved to the judiciary and the Senate when sitting as a court of impeachment.

On January 1, 1976, Section 109 was repealed and replaced with the following:

The judicial power of the Commonwealth shall be vested exclusively in one Court of Justice which shall be divided into a Supreme Court, a Court of Appeals, a trial court of general jurisdiction known as the Circuit Court and a trial court of limited jurisdiction known as the District Court. The court shall constitute a unified judicial system for operation and administration. The impeachment powers of the General Assembly shall remain inviolate.

The plain language of this section reflects Kentucky's firm commitment to the separation of power. Section 109 clearly vests all judicial power in the Judicial Department but makes clear that the General Assembly's historical impeachment power remains.

Section 109 powers have never included removal of judges. Before 1976, Sections 112 and 129 made removal the job of the Governor upon address by both houses of the General Assembly. After 1976, it is the job of the Judicial Conduct Commission. Whatever powers the General Assembly had before 1976, they did not include removal of judges.

Section 28 carefully balances the powers of government by preventing the exercise by one branch of “any power properly belonging to either of the others, except in the instances *hereinafter expressly directed or permitted.*” (Emphasis added.)

Expressly means “explicit.” *Garner’s Modern English Usage*, 5<sup>th</sup> Edition, p. 434 (2022). Explicit means “fully revealed or expressed without vagueness implication or ambiguity; leaving no question as to meaning or intent.” *Merriam-Webster’s Collegiate Dictionary*, 12<sup>th</sup> Edition, p. 574 (2026).

The reference to “civil officers” in Section 68 is not the kind of express indication that Section 28 requires. The Commission created by Section 121 is an agency of the Judicial Department charged with the duty of removing judicial officers for cause. Given the history of judicial removal and the plain language of Sections 121 and 124, there can be no doubt that the General Assembly has no role in the disciplining or removal of judges.

*Judge Goodman Does Not Present a Political Question.*

To quote page 5 of the Court of Appeals Order in this matter, a political question is one that involves the exercise by one department of a task that is “committed by a textually demonstrable provision of the Constitution to the other department.” The task of removing judicial officers has never, from August 1891 to the present, been committed to the General Assembly.

*The Constitution Does Not Offer A Choice of Remedies*

The preceding arguments show that the fate of an elected judicial officer cannot turn on the decision of a petitioner to complain to the legislature rather than to the Commission.

Removal from office by impeachment is final. There is no appeal of right. Section 77 denies the power of pardon in impeachment cases. But under Section 121, the action of the Judicial Conduct Commission can be reviewed by this Court. Impeachment denies judges this important constitutional right.

And as a matter of fair notice under the 14<sup>th</sup> Amendment and Section 2 of the Bill of Rights, the Commission has standards to which a judge can look for guidance. The Code of Judicial Conduct gives fair warning as to what might result in removal. “Misdemeanors in office,” the standard set out in Section 68, defies definition. It appears to be a common law offense that may (KRS 446.082) or may not (KRS 500.020) even exist. How can Judge Goodman defend against an undefinable charge? On what standard beside its own opinions can the Senate base

its decision? In this context, Section 68 may well be void for vagueness under the Due Process Clause of the 14<sup>th</sup> Amendment.

### **Conclusion**

The Constitution has always been clear. "Civil officers" are liable to impeachment by the General Assembly. Judges are liable to removal, a process different from impeachment. The Court is urged to grant the relief requested by Judge Goodman so that the momentous constitutional questions presented by this case can be resolved.



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