

## STATE QUESTION NO. 1

### **Amendment to the *Nevada Constitution*** Senate Joint Resolution No. 2 of the 74th Session

Shall the *Nevada Constitution* be amended to provide for the appointment of Supreme Court justices and District Court judges by the Governor for their initial terms from lists of candidates nominated by the Commission on Judicial Selection, with subsequent retention of those justices and judges after independent performance evaluations and voter approval?

Yes       No

#### **EXPLANATION**

Currently, the *Nevada Constitution* provides for the election of Supreme Court justices and District Court judges in Nevada to 6-year terms. When a vacancy occurs between elections, the Governor appoints a justice or judge from a list of candidates recommended by the Commission on Judicial Selection. The Commission consists of the Chief Justice of the Nevada Supreme Court and equal numbers of attorneys and non-attorneys.

The proposed amendment to the *Nevada Constitution* would provide for the initial appointment of all Supreme Court justices and District Court judges through the same process currently used to fill midterm vacancies. When any vacancy occurs, the Commission on Judicial Selection would nominate a list of candidates based on their experience and qualifications, and provide the nominees' names to the Governor and the public. The Governor would then appoint one of the nominees. After being appointed by the Governor, justices and judges will initially serve terms that expire in January following the next general election which occurs at least 12 months after appointment.

Justices and judges seeking another term would be evaluated based on their record by the newly created Commission on Judicial Performance, which would consist of the Chief Justice of the Nevada Supreme Court and equal numbers of attorneys and non-attorneys. A summary of the Commission's evaluation would be made available to the public at least 6 weeks before the general election. The names of all justices and judges seeking another term would appear on the ballot, and voters would decide whether justices and judges should serve another term. Justices and judges need 55 percent of the vote to be retained. If retained by the voters, a justice or judge will serve a 6-year term and will be subject to another evaluation and election at the end of each subsequent 6-year term if he or she wishes to serve another term. If a justice or judge does not declare his or her candidacy or receives less than 55 percent of the votes cast at the election, the vacancy is again filled through the appointment process.

This question also increases the number of members on the Commission on Judicial Selection by adding an additional attorney and a non-attorney and provides for the membership of the new Commission on Judicial Performance.

**A “YES” vote would amend the language in the *Nevada Constitution* to allow for the appointment of Supreme Court justices and District Court judges by the Governor for their initial terms from lists of candidates nominated by the Commission on Judicial Selection, with subsequent retention of those justices and judges after independent performance evaluations by the Commission on Judicial Performance and voter approval.**

**A “NO” vote would retain the existing language in the *Nevada Constitution* that Supreme Court justices and District Court judges in Nevada must be elected except for those who are first appointed to fill vacancies and then stand for election.**

### **ARGUMENT ADVOCATING PASSAGE**

A fair and independent judiciary is essential to maintaining the public trust and confidence in Nevada’s court system and preserving the rights of all citizens. Justices and judges are not intended to be politicians, yet they are required to campaign and engage in fundraising. The extent to which they are able to impartially interpret and apply laws depends upon their ability to remain free from political pressure and outside influence from campaign contributors.

In recent years, judicial campaigns have been characterized by increased fundraising and spending. Thus, elections may be based on a candidate’s ability to raise funds rather than the merits of the candidate’s legal career or judicial performance.

Justices and judges in the State of Nevada are allowed to solicit money directly from campaign contributors and are not required to recuse themselves or give notice when a campaign contributor appears before them in court. Typical contributors to judicial campaigns include attorneys, law firms, litigants, potential litigants, and special interest groups who may have pending legal cases. In addition, justices and judges who are subject to political campaigns cannot focus their full attention on their judicial responsibilities.

The appointment and retention of justices and judges based on merit rather than the ability to mount a successful political campaign would remove them from partisan politics while maintaining the people’s ability to vote whether to retain or remove a justice or judge. Further, merit selection will give full consideration to the ability, character, and qualifications of a judicial candidate before his or her name is placed on the ballot for retention, and will allow voters to focus on the candidate’s judicial record when casting their ballots.

At present, several states across the nation have adopted a nominating plan like this one for the appointment of judges to initial terms on the bench, and many also hold retention elections at the expiration of a judge’s term. In 1976, the people of Nevada approved an amendment to the *Nevada Constitution* that provides for the Commission on Judicial Selection to make recommendations for filling midterm vacancies at the Supreme Court and District Court levels. Thus, appointments to the bench are not new in Nevada and already involve a rigorous selection process based on merit.

## ARGUMENT OPPOSING PASSAGE

The ability of the public to elect justices and judges in Nevada is an important aspect of democracy. Providing that candidates for justice or judge must be nominated by the Commission on Judicial Selection and appointed by the Governor does not ensure judicial competence and integrity. Passage of this question would eliminate the right of voters to initially elect justices and judges.

Appointment removes an essential level of public scrutiny and is an undemocratic way to select justices and judges that ignores the will of the people. This question assumes an uninformed electorate and presumes that a select group of individuals are better qualified to choose those who will sit on the bench. It also promotes a system in which those in the legal profession can recommend colleagues to the highest positions of the judicial branch. Qualified candidates may be excluded from consideration by the Commission on Judicial Selection for arbitrary reasons. Similarly, justices and judges may be unfairly evaluated by the Commission on Judicial Performance.

This question will not eliminate the potential for judicial corruption and political influence. Several states have addressed this concern in other ways. For example, some states prohibit judicial candidates from accepting campaign contributions and others require recusal from cases in which a party or their attorneys have contributed to the justice's or judge's campaign. These alternatives would solve the problem of political campaigning and fundraising without eliminating the right of the people to elect their judiciary. Finally, Rule 4.2 of the *Nevada Code of Judicial Conduct* currently provides that justices and judges cannot raise campaign funds if they run for election unopposed.

## FISCAL NOTE

### **Financial Impact – Cannot Be Determined**

The provisions of this question would amend Article 6, Section 20 of the *Nevada Constitution* to increase the membership on the Commission on Judicial Selection from seven to nine members, and require that the Commission select three nominees for a vacancy occurring for any reason in the Supreme Court or the District Courts throughout the State. Based on information provided by the Administrative Office of the Courts, enactment of these provisions would increase the workload of the Commission, requiring additional meeting preparation, travel expenses, room rental, and staff costs for each meeting of the Commission necessary to create the list of candidates for a judicial vacancy, thereby resulting in a financial impact upon the State. However, the timing and frequency of future vacancies that would require meetings of the Commission is not known, and the number of meetings that would be necessary to fill any vacancy on the Supreme Court or in a District Court cannot be determined. Thus, the actual financial effect upon the State cannot be determined with any reasonable degree of certainty.

The provisions of this question would also amend Article 6 of the *Nevada Constitution* by adding a new section, designated Section 22, which would create a Commission on

Judicial Performance as a new entity responsible for evaluating any Supreme Court Justice or District Court judge who wishes to seek another term through a retention election. Based on information received by the Administrative Office of the Courts, enactment of these provisions would require the Commission on Judicial Performance to develop and implement specific evaluation criteria to be used by the Commission to perform its specified duties. However, the specific evaluation criteria that will be established for use by the Commission and the number of judges and justices who may wish to seek retention, if this question is approved, cannot be determined. Thus, the specific financial impact upon the State or local government or upon individual taxpayers cannot be determined at this time.

Under current law, justices of the Nevada Supreme Court and judges of the District Courts of the State are elected by popular vote at a general or special election. The provisions of the constitutional amendment would eliminate the election of Supreme Court justices and District Court judges when there is a vacancy and would require retention elections for any judge or justice who wishes to retain his or her seat for another term. Based on information received from the Office of the Secretary of State, these provisions would have no financial impact upon the State or local government.