

# SJR 2 - 2007

**Introduced on:** Feb 13, 2007

**By** Raggio , Hardy , Care , Coffin , Carlton , Amodei , Mathews , Nolan , Titus , Townsend

*Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)*

## Fiscal Notes

Effect on Local Government: *No.*

Effect on State: *No.*

**Most Recent History Action:**  
**(See full list below)**

File No. 104.  
**(Return to 2009 Session)**

## Past Hearings

Senate Judiciary	Mar-08-2007	No Action
Senate Judiciary	Apr-05-2007	No Action
Senate Judiciary	Apr-11-2007	Do pass
Assembly Judiciary	May-01-2007	No Action
Assembly Judiciary	May-18-2007	Do Pass, failed
Assembly Judiciary	May-23-2007	No Action
Assembly Judiciary	May-24-2007	Amend, and do pass as amended

## Votes

<b>Senate Final Passage</b>	Apr-16	Yea 15,	Nay 6,	Excused 0,	Not Voting 0,	Absent 0
<b>Assembly Final Passage</b>	May-25	Yea 30,	Nay 11,	Excused 1,	Not Voting 0,	Absent 0

## Bill Text (PDF)

[As Introduced](#)

[1st Reprint](#)

[As Enrolled](#)

## Statutes of Nevada 2007

[File No. 104](#)

## Amendments (PDF)

[Amend. No.984](#)

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## Bill History

Feb 13, 2007 Read first time. Referred to Committee on Judiciary. To printer.

Feb 14, 2007 From printer. To committee.

Apr 12, 2007 From committee: Do pass.

Apr 13, 2007 Read second time.

Apr 16, 2007 Read third time. Passed. Title approved. (Yeas: 15, Nays: 6.)  
Notice of reconsideration on next legislative day.

Apr 17, 2007 To Assembly.

Apr 18, 2007 In Assembly.  
Read first time. Referred to Committee on Judiciary. To committee.

May 19, 2007 (Pursuant to Joint Standing Rule No. 14.3.3, no further action allowed.)

May 22, 2007 Waiver granted effective: May 21, 2007.

May 25, 2007 From committee: Amend, and do pass as amended.  
Declared an emergency measure under the Constitution.  
Read third time. Amended. (Amend. No. 984.) To printer.  
From printer. To engrossment. Engrossed. First reprint.  
Placed on General File.  
Read third time. Passed, as amended. Title approved. (Yeas: 30, Nays: 11,  
Excused: 1.)  
To Senate.

May 29, 2007 In Senate.

May 30, 2007 Assembly Amendment No. 984 concurred in. To enrollment.

May 31, 2007 Enrolled and delivered to Secretary of State.  
File No. 104.

**(Return to 2009 Session)**



PREPARED BY  
RESEARCH DIVISION  
LEGISLATIVE COUNSEL BUREAU  
Nonpartisan Staff of the Nevada State Legislature

**BILL SUMMARY**  
74<sup>th</sup> REGULAR SESSION  
OF THE NEVADA STATE LEGISLATURE

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**SENATE JOINT RESOLUTION NO. 2**  
**(Enrolled)**

**Topic**

Senate Joint Resolution No. 2 concerns the selection of justices and judges.

**Summary**

Senate Joint Resolution No. 2 proposes to amend the *Nevada Constitution* to provide for the initial appointment of Supreme Court Justices and District Court Judges, followed by a retention election by the voters in Nevada. An initial appointment is made by the Governor from candidates chosen by the Commission on Judicial Selection. This appointment expires on the first Monday of January following the general election that occurs at least 12 months after appointment.

Upon declaration of candidacy for retention, a justice or judge must undergo a performance review by the newly created Commission on Judicial Performance. The Commission must issue a report to the public of its review and recommendation prior to the retention election. If 55 percent of the votes cast are in favor of retention, the justice or judge serves a six-year term and is subject to another retention election and performance review at the end of each six-year term. If he does not declare his candidacy or receives less than 55 percent of the votes cast, the vacancy is again filled through the appointment process.

**Effective Date**

If approved in identical form during the 2009 Session of the Legislature, the proposal will be submitted to the voters for final approval or disapproval at the 2010 General Election.

# LEGISLATIVE HEARINGS

## MINUTES AND EXHIBITS

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session  
March 8, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:03 a.m. on Thursday, March 8, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Mark E. Amodei, Chair  
Senator Maurice E. Washington, Vice Chair  
Senator Mike McGinness  
Senator Dennis Nolan  
Senator Valerie Wiener  
Senator Terry Care  
Senator Steven A. Horsford

**GUEST LEGISLATORS PRESENT:**

Senator William J. Raggio, Washoe County Senatorial District No. 3

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Brad Wilkinson, Chief Deputy Legislative Counsel  
Barbara Moss, Committee Secretary

**OTHERS PRESENT:**

Tonja Brown  
Sherry Powell  
Patty Pruett  
Alecia D. Biddison, The Busick Group  
Garret L. Idle  
Vincent A. Consul, State Bar of Nevada

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Bruce T. Beesley, Vice President, State Bar of Nevada  
Bridget Robb Peck, Former Judge  
Richard J. Morgan, Dean, William S. Boyd School of Law, University of Nevada,  
Las Vegas  
James W. Hulse, Common Cause/Nevada  
Janine Hansen, Nevada Eagle Forum  
Lynn Chapman, Vice President, Nevada Families  
David K. Schumann, Nevada Committee for Full Statehood  
John L. Wagner, The Burke Consortium  
Sheila M. Ward  
Lewis Shupe  
Keith L. Lee, Sutton Place Limited  
William R. Uffelman, President and CEO, Nevada Bankers Association  
G. Barton Mowry

CHAIR AMODEI:

The hearing is opened on Senate Joint Resolution (S.J.R.) 2.

**SENATE JOINT RESOLUTION 2**: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)

SENATOR WILLIAM J. RAGGIO (Washoe County Senatorial District No. 3):

I will read my prepared testimony in support of S.J.R. 2 (Exhibit C), which is not a major change in the procedure approved under the *Constitution of the State of Nevada* for filling vacancies. It extends the procedure to the initial selection and retention of higher court judges of the Nevada Supreme Court and district courts.

Those who oppose this type of procedure believe it takes away people's right to vote, but that is not the case because judges or justices stand for retention elections. This procedure is different than that proposed in the past. This matter came before the Legislature several times, passed and was put on the ballot. Similar proposals before the Legislature and electorate in past years were defeated in 1972 and 1998. I am a lawyer practicing over 50 years in Nevada who believes this process is superior to the election process with respect to the judiciary.

Times have changed since I first proposed this type of process. Elections have become nasty, uncivil and subject to partisan politics. That aspect should be removed from judiciary retention or selection, and judges should be fair, impartial and not make promises. It is necessary to change the way Nevada judges are initially selected and retained.

I have been part of the political process for a long time. I have seen judicial candidates sitting in outer offices soliciting contributions from attorneys. Recently, there was a series in the Los Angeles media which was termed an exposé of the judicial system in Clark County. It gave examples of political solicitations and contributions alleged to have crossed the line. I will not repeat these allegations; however, they are in the public's memory and did not do the judicial process any good. It brought down the respect necessary to accomplish a fair, impartial judiciary which is important to the democratic process.

Judges and justices selected through the Commission on Judicial Selection process to fill vacancies have been superior and, in most cases, extraordinary. Times have changed, as well as the perception of the public. Most surveys indicate this is the preferred method of initial selection of judges. These surveys can be made available to the Committee.

Events occurring since these measures were considered justify submitting the issue to the people of Nevada. In view of the new aura, concern and perception, voters need the opportunity to express themselves again on this issue. The resolution would pass the Legislature in two separate sessions and then go on the ballot. Let the public have their say. If they turn it down again in view of the current perception and what has occurred, that is fine, but they should be given that opportunity.

I stress an independent judiciary. Too many special interest groups want to place undue pressure on the judiciary to follow their issues. Some groups want to jail judges if they do not go along with what they perceive to be an appropriate decision. Judges should not live in fear or favor in making their decisions. If they are wrong, a retention election can be decided by the voters.

Some say a judge will never be removed. That is not true. Supreme Court judges have been removed in California. There are cases in which judges have not been retained through this process. The public would be given full information to make a decision, which they do not have at present in the

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confusion of rhetoric and political damage in campaigns with contested elections for judges.

This is not a perfect system. Lawyers agree the jury system is not perfect, but it is far better than any other throughout the world to try civil or criminal cases. This resolution is a better process to select a fair and independent judiciary that will not have to look over its shoulder every time it is called upon to make a judicial decision.

I do not disparage any particular judge or justice, but those judges who have been appointed to fill vacancies in the process measure up better than many judges who are initially elected. Nevada has excellent elected judges, but the process to fill vacancies results in better-qualified judges to serve in these positions.

SENATOR RAGGIO:

What can a judge promise? Legislators run for office and have positions, biases and issues on which they take sides. Judges are expected and anticipated to be impartial. Although judges have the ability to comment on issues, they should act impartially and listen to every side. Judges should not promise anything to get a vote or solicit contributions.

There is a lot of language in S.J.R. 2, but it essentially extends the same process to the initial selection and retention of judges to fill vacancies in judicial positions. The system would be improved and enhanced by a commission to evaluate, interview, report and recommend retention of a judge who has filled that position to the public. If I sound passionate—I am.

I provided the Committee a list of states that have the process of selection through a nominating commission for the state supreme court as well as judicial selection for appellate and general jurisdiction courts (Exhibit D).

TONJA BROWN:

I support S.J.R. 2 because the time has come for corrupt judges to stop protecting their families and friends. I base this statement on personal experience. I have a letter (Exhibit E, original is on file in the Research Library) written in 1996 to former Judge Mills Lane from Detective Niles Carson stating that Judge Lane, Detective Carson and former Judge Charles M. McGee conspired to conceal the disappearance of deoxyribonucleic acid (DNA) evidence

in a particular case. Judge McGee was aware his public defender at a 1991 post-conviction hearing committed perjury, yet he based his decision on this woman's perjured testimony.

On March 2, 2003, I appeared, presented evidence and testified before the board members when Shelly O'Neill was considered for a new program with the public defender's conflict unit. Ms. O'Neill did not dispute my testimony. In 1993, Ms. O'Neill told me she committed perjury and lied about investigating the prime suspect and all the evidence that cleared my brother of his crime. Judge McGee dismissed the case, and the Nevada Supreme Court affirmed their decision.

The fight to prove my brother's innocence has cost me a great deal, not only in Washoe County but Carson City as well. A petition containing 5,400 signatures of registered voters was sent to the grand jury and panel to investigate Carson City judges. The judge did not like what the grand jury said about him, recused himself and passed the case on to Judge Michael R. Griffin. Judge Griffin did not like it either, recused himself and sealed the records. After a hoopla in Carson City, Judge Mark Gibbons came from Las Vegas. He did not like what the grand jury said about their judges and had records rewritten and sealed, where they remained for some time.

I protested at the Carson City Justice and Municipal Court with a sign that said "5400 People Can't Be Wrong." When I entered the building and tried to sit down, I was assaulted and arrested for trespassing in a public building because of my sign. I hired an attorney who argued the constitutionality of the ordinance on trespassing was vague. Due to the plight of my brother, Judge William A. Maddox violated my due process when he stated in print on July 17, 2002, that they did not agree with my version of the story. I had not even had a chance to plead not guilty to the charges. It took two and one-half years to bring me to trial for the trespassing charge. During that time, Judge Griffin refused to recuse himself when Judge Steven McMorris ruled in my favor and the Office of the District Attorney appealed. I went to Judge Griffin who refused to recuse himself, overturned Judge McMorris's decision and turned the case over to Judge John Tatro.

I will read some of the testimony (Exhibit F). According to Judge Tatro, the testimony of the two bailiffs involved in the assault and wrongful arrest was concise, consistent and credible. Bailiff Roy Eddings, when asked about sitting

on the bench, responded, "We told her it was not her right to sit there. I cannot remember if it was Ann or Robert who tried to explain to her that if she went through the metal detector she could sit there, but she would have to go through the metal detector first." Bailiff Ann Jones was asked, "Did you or anyone else tell Ms. Brown she could clear the security area and sit on the bench on the other side?" Her response was, "No Sir, we did not." They both said it was all right for me to sit on the bench in the foyer.

Bailiff Eddings is the one who assaulted me. He was asked, "Is it your testimony here today that Ms. Brown did not claim she had a back injury and was handicapped while you were handcuffing her?" At the time, I complained while she was arresting, handcuffing and putting my face down on the floor. She answered, "Not that I recall." Bailiff Jones, when asked the same question, answered,

I know she was screaming and yelling, and I remember her saying she had a back injury and was handicapped. Then Officer Eddings actually had to take her down because she was resisting. Take her down and take the other arm, and yes, she was saying you are hurting me, ouch, you are hurting me.

CHAIR AMODEI:

What we have before us is S.J.R. 2, and I know you are in favor of it. It is relevant you tell us why you are in favor of it, but in the interest of time, please complete your testimony.

Ms. BROWN:

A Website entitled <<http://courthouseforum.com>> is the nation's repository on court information. This Website tells more about the way I was treated. Judge Tatro ruled against me in favor of the two bailiffs because they were consistent and concise. Throughout their testimony, they contradicted their previous testimony; in fact, Bailiff Jones backed me. I was found guilty. It was appealed on the claim that the constitutionality of the ordinance was vague. The case went to Judge Mark Gibbons, the brother of Douglas County Judge Michael P. Gibbons, who upheld Judge Tatro's decision. There were no further appeals because we got Justice Mark Gibbons, the original judge who was angry about the grand jury report and sealed the records.

This was conflict of interest and judges protecting one another, their families and friends. In the grand jury report, one of the persons indicted was Assistant District Attorney Anne Langer for Carson City, who was the juror in my brother's case. Over the years, information came out they did not like. In conclusion, the time has come for judges to be held accountable for their actions. We, the people, are tired of it.

SHERRY POWELL:

I am a paralegal certified legal assistant and held by the same ethics as attorneys and judges. In the past ten years, I have witnessed some appalling behavior. I head a group called the Ladies of Liberty, consisting of women who have suffered political injustices, many at the hands of judges.

Cindy Ball was shot in the face by her husband who was released from jail. Her children were taken from her and raped. Her daughters killed their father. Several times, the domestic abuse case was brought before a judge, but nothing was done. It is now hidden. Ms. Ball suffers financial loss, emotional problems, and her children are destroyed. All this was at the hands of judges. In the last Lyon County campaign, two judges used her as an example, exploited her and her children, and acted as though they helped her in some fashion. I assure you, nobody helped her at all.

The second example is the murder of my children's father, which was covered up by two Elko County judges. In the last ten years, I have met some of Nevada's finer judicial people. I attended the ethics meeting wherein they said all complaints are processed and reported to the public. That is false. If you are not part of the judiciary and file the complaint as an attorney or a judge, your case is thrown in the trash.

Last, but not least, is Anne Langer who ran for Storey County District Attorney. Ms. Langer received a full report of the rape of my daughter by a 53-year-old man. Ms. Langer not only did nothing but exploited my daughter over the Internet. My daughter is a juvenile and cannot report it to the public. On my daughter's sixteenth birthday, I went before the Commission on Judicial Selection. I commend them for an excellent job. I like that the people on the selection board were split between the bar and appointees—with bar individuals and attorneys on one side and people appointed by the Governor on the other—to make a legitimate selection for judges. They were replacing Judge Michael Griffin and listened to what I had to say.

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The illegal seizure of my children went before Judge Griffin, and the case went nowhere. I spoke to Senator Amodei when my three children were illegally taken from me. No law supports seizure of my three children. It took three years. One of my children died last Friday because he could not take the betrayal of the system. I am not going to give up on judicial reform. Judges and judicial discipline should be looked at seriously. It would be like putting sex offenders on a jury for serial killer Ted Bundy. Judges and attorneys protect each other.

Complaints before judicial discipline have been thrown in the garbage. I do not care where they come from. If they come from a paralegal, you still need to look into it. You are supposedly higher trained, know more and have degrees. Look into it because the average citizen can tell they are wrong. There is a Churchill County judge who has 112 ethics violations. He pleaded guilty to 107 and was still allowed to sit on the bench. His violations were fixing his wife's traffic tickets, his son's drug convictions, and postponing 19 sexual offense cases in Carson City. One case in particular involved a little girl who talked to boys on the Internet. She went to their house and four boys gang-raped her. She was told she should not have gone over to the house. What kind of justice is that?

My daughter took three polygraphs, and the district attorney lied. She was not only a victim once, but was made a victim three times after that. She took three polygraphs and passed them all. They still have not arrested the man who has a record of molesting an eight-year-old child. This is disgusting. If you think I am the only case, think again. There are many. People come to me because they have no other recourse. I am not an attorney and cannot represent anybody, but I can come here and lobby on their behalf.

There are many mothers such as Cindy Ball, Zach Warren's mother, and Andrea Wollman, who lost their children to situations that could have been prevented. The judiciary handled the cases improperly. In the Zach Warren case, a \$10,000 bail was set on a man who had a record of violence. He was a felon carrying a firearm who shot Zach Warren in the head. It is that simple. They are not keeping these people incarcerated and following up on the research. They appointed Judge Steven McMorris, who set \$1-million bail on this man. That is how it should have been in the first place.

PATTY PRUETT:

I submitted a series of articles regarding bad actions on the part of judges (Exhibit G). I am also a victim of the system and a witness to some of the events in Ms. Powell's testimony. I saw a detective in the sheriff's office tell Ms. Powell her daughter passed three polygraphs. One was given by a detective who was not certified to administer the test, and she was not charged. That is obstruction of justice and tampering with evidence. It all falls under ethics. Judges grant protective orders against people without evidence. A judge granted a protective order against me on behalf of a sheriff's deputy, who happens to be her brother. The brother has a protective order on her as well. I was not allowed to have witnesses testify, the judge refused to look at my evidence and granted the protective order. In his testimony, the judge said since Judge Robey Willis of Carson City granted this order last year, he might as well uphold it. If I could afford \$90 to get my transcripts, I would show them to you.

Judges grant temporary protective orders for their pals. I have no criminal background, have never been arrested and did not stalk an armed officer. I never spoke to that officer. One judge granted the protective order against me that was upheld by two other judges in the last year and one half. I am tired of it. I am tired of Ms. Powell's daughter being victimized and ignored by the sheriff and judges, which includes Anne Langer passing out information.

SENATOR NOLAN:

Legislators rely on factual and honest testimony of witnesses to make decisions. A prevailing statute says nonfactual and dishonest testimony constitutes perjury and those who testify are subject to the penalties of perjury. The previous testimony is disturbing if factual, and we assume that is the case. We should request staff to investigate allegations, and if they are true, we have an obligation to take a different direction. Senate Joint Resolution 2 does not address some of the issues raised; however, if the testimony was not factual, we should pursue the course of action to take with people who lead us in the wrong direction.

CHAIR AMODEI:

Ms. Eissmann, please obtain information on the allegations and present them at the work session on S.J.R. 2.

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ALECIA D. BIDDISON (The Busick Group):

I will read my prepared testimony (Exhibit H) supporting S.J.R. 2. This system gives the public two opportunities to weigh in on the judge before whom they may appear—once prior to the Governor appointing the judge and again within two years when the judge comes up for retention vote. Voters will be provided knowledge and information in order to make the best decision. It is my hope you will support S.J.R. 2 and embrace a significant step towards achieving a stronger judiciary.

GARRET L. IDLE:

I will read my prepared testimony (Exhibit I) in support of S.J.R. 2.

VINCENT A. CONSUL (State Bar of Nevada):

I submitted a letter dated March 6, from myself to Senator Amodei with an attached article entitled, "Do We Really Elect Our Judges?" (Exhibit J). I support S.J.R. 2 and have some statistical information. Senator Raggio indicated this change switches the appointment system from one in which judges are appointed to open judicial seats to appointment at the front end. This is not a drastic change. The current system under the *Constitution of the State of Nevada* provides for the appointment of judges when a seat becomes vacant. This resolution would appoint judges up front. Statistics show Nevada already does this to a significant degree.

Approximately 18 months ago while serving as president of the State Bar of Nevada, I contacted Ron Titus, the Court Administrator and Director of the Administrative Office of the Courts. Mr. Titus oversees the Nevada Supreme Court as well as district courts, which are the subject of S.J.R. 2. I asked Mr. Titus to provide information on all judges of those courts and how they attained their first judicial position. The statistics were interesting.

When I did this analysis in September 2005, four out of seven Nevada Supreme Court Justices had attained their initial judicial position through the appointment process. They went on to rise from district court seats to the Supreme Court through elected positions, but the key here is their initial attainment of a judicial position was through the appointment process. I perused the numbers and four of seven Supreme Court Justices as constituted today attained their initial position through the appointment process, which is a rate of approximately 57 percent.

With regard to the district court, which is the other component of the judicial system addressed by S.J.R. 2, my September 2005 analysis showed of 61 district court judges, 24 attained their initial judicial position through the appointment process. That is an appointment rate of 40 percent. Two more judges must be added who, while elected to district court, attained their initial position either in municipal court or justice court through the appointment process, which raised the rate to 43 percent.

The Nevada Supreme Court initially appointed two judicial seats at the rate of 57 percent and district court judges were appointed at the rate of 43 percent. The total in 2005 was 68 judgeships between district court and Supreme Court with 30 attaining their initial positions through the appointment process. This is what S.J.R. 2 requests. Overall, the appointment of a judge to the initial judicial position is 44 percent; justice court, 40 percent; and municipal court, 47 percent. All numbers combined gave an appointment rate of 43 percent.

We are already halfway there. The practical application of the process in place has resulted in appointments of Nevada judges to their initial positions at the rate of 44 percent. I will provide the letter from Ron Titus containing the statistical information (Exhibit K).

SENATOR MCGINNESS:

Do the statistics also show how many times the judges have been elected since their appointment?

MR. CONSUL:

Yes, the chart prepared by Mr. Titus shows the history of how each judge attained their initial position, and subsequent elections to district court and the Nevada Supreme Court.

SENATOR MCGINNESS:

I look forward to seeing that information.

BRUCE T. BEESLEY (Vice President, State Bar of Nevada):

I submitted a position paper from the State Bar of Nevada in support of S.J.R. 2 (Exhibit L). The State Bar Board of Governors overwhelmingly voted to encourage S.J.R. 2 because of significant difficulties in judicial campaigns and public perception. An effective judiciary must be impartial and not subject to

improper or outside influence, and the public should perceive it as such. A system requiring hundreds of thousands of dollars in the case of district court judges and approaching \$1 million in the case of Nevada Supreme Court Justices lends itself to citizens, who appear before those judges and justices, perceiving that their opponents, who contributed to those judges, have an unfair advantage. That is a bad situation for our judiciary.

In 2002, the U.S. Supreme Court made a ruling, *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), that allowed judges to comment specifically on their position on a particular issue during their campaign. I anecdotally heard the justices of the U.S. Supreme Court felt the decision would lead to a debate on merits of various positions as well as candidates. Unfortunately, that has not proved to be the case. It has led to candidates promising their position as such and such on unions, child support or criminal defendants, which is inappropriate. You will not feel the judge with whom you are appearing is impartial if that judge, during his campaign, indicated his position on unions. The public needs to perceive the judiciary is impartial and the election system is injurious to that perception.

There is a problem with the considerable amount of time devoted to campaigning and raising funds in judicial campaigns. In his State of the Judiciary address, Chief Justice William Maupin indicated Nevada adjudicates 750,000 cases a year, which are a lot of cases for the limited number of judges and justices. Judges should be working in their offices, chambers and courts resolving those issues rather than raising hundreds of thousands of dollars to support their campaigns every six years and devoting their eight-to-five time to meetings and so forth.

Judges in the State of Nevada are allowed to solicit money directly from campaign donors, which is not allowed in many states. They are also not required to recuse themselves or give notice to participants who appear before them if the lawyer representing either party has contributed to their campaign. If judges believe they will not be affected by contributions, they are not required to disclose those or recuse themselves. This fact, as highlighted in *The New York Times* and *Los Angeles Times* articles, harms the perception of whether a person receives a fair shake in front of a particular judge for their position.

All of those things would be mitigated by passage of S.J.R. 2. It is time in Nevada, as well as the rest of the country, to get rid of contested elections for

judges. It would also make it easier to remove incompetent judges. A judicial evaluation committee composed of lawyers and members of the citizenry could do a studied evaluation of judges' qualifications and behavior over the last term and present it to the voters. Rather than 50-plus percent of the voters to get rid of a judge, it would only take slightly over 40 percent to get rid of a nonperforming judge. Voters would receive better information as to judges' qualifications and practices.

SENATOR CARE:

Is there any data regarding jurisdictions where certain campaign contributions are not permitted?

MR. BEESLEY:

Nevada judges are allowed to solicit campaign contributions. The fact that a judge has received a campaign contribution from a party appearing before him or a lawyer representing a party appearing before him does not have to be disclosed and does not necessarily disqualify the judge. I will see if there are statistics to that regard and submit them to you.

SENATOR CARE:

Do other jurisdictions have restrictions on campaign contributions to judicial candidates?

MR. BEESLEY:

Many jurisdictions do not allow judges to directly solicit campaign contributions.

SENATOR HORSFORD:

Please speak more about the Commission on Judicial Performance section of S.J.R. 2, specifically the makeup, appointment and value.

MR. BEESLEY:

The permanent Commission on Judicial Performance would consist of a certain number of lawyers who appear regularly before the judge, members of the public appointed by the Governor, some component representing the dean of the law school and a group of people in a position—either through involvement in the community or practice in the courts—with some idea of the judge's activities. The Commission would be required to undertake due diligence to determine the judge's reputation for: judicial temperament, practices, appearances by the people and time frame for resolving caseloads and matters

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under submission. The Commission would be required to interview the judge and take input from the public regarding the judge's performance. Using standard criteria, the Commission would come forward with a recommendation whether to retain the judge. Criteria would indicate a strong recommendation to retain, a recommendation to retain or a recommendation not to retain. Those things exist in other states.

SENATOR HORSFORD:

Page 3, line 1 of S.J.R. 2 says "Not later than 6 weeks before the general election" the Commission will issue this report. Early voting starts within 30 days; does this mean only a 2-week notice of that provision? This may not be the appropriate panel for this question. I would like to clarify from whence that language came because the logistics sound difficult to implement.

MR. BEESLEY:

That is a valid point. Perhaps when this resolution was drafted, the early voting component was not considered. In a judicial evaluation, the Commission could begin its task earlier and report to the public in time to allow people to evaluate the results before early voting.

SENATOR HORSFORD:

Why do 60 percent of votes cast mean the judge is retained rather than 50 percent plus 1?

MR. BEESLEY:

I do not know the answer to that question.

MS. BIDDISON:

I participated in the drafting of S.J.R. 2 and can answer those questions, although Senator Raggio is the best person to answer. A 60 percent versus a 50 percent gives a more qualified and better performance picture of whether the judge should be retained. The 60-40 split is a percentage used successfully in other states, which is the reason I gave statistics on the Tennessee case with the 27 judges achieving 70 percent based on their retention vote. Timing of the review can be changed through a Committee amendment to ensure information is provided to the public in advance of early voting.

SENATOR WASHINGTON:

Are certain standards and criteria within the judicial review?

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MS. BIDDISON:

The standards and criteria will be developed. One suggestion was to use an evaluation entitled CourTools, which has been used successfully in a number of states. A test case was done in Clark County, and a study is available.

SENATOR WASHINGTON:

The Committee would like a copy of that study.

MS. BIDDISON:

I will make the report to Clark County on using the performance measuring device called CourTools available to the Committee. Although used successfully in Clark County, it received resistance from judges. It is a thorough review process.

SENATOR WASHINGTON:

Would the review be available to the general public prior to the retention election?

MS. BIDDISON:

Yes, the performance review would be available to the public.

MR. BEESLEY:

Judges would all be evaluated by the same standards. A disparate amount of money would not be available for spending in one campaign or another. It would be an apples-to-apples comparison across the group of judges being retained.

BRIDGET ROBB PECK (Former Judge):

In April 2006, I was appointed by the Governor to district court and went through a contested election. The selection process was rigorous and the questionnaire came to 45 pages after completion. The questions encompassed my areas of practice, published cases to appellate bodies, scholarly articles, lawsuits against me, disciplinary complaints leveled against me, health, background and recommendations from attorneys, judges and the general public.

The selection board included the Chief Justice of the Nevada Supreme Court, members selected by the Board of Governors of the American Bar Association, and members selected by the Governor. During the interview, the panel

investigated my background, qualifications, education and judicial temperament. The panel was even-handed, politically neutral and equipped to study the candidate's background. The political process does not permit that type of activity.

During my campaign, I walked door-to-door in Washoe County. Voters frequently asked why the public votes for judges. They did not understand the process, did not particularly want to vote for judges and, many times, did not know the court for which I was running. I spent time educating people on the difference between the justice, municipal, and district courts and the Nevada Supreme Court, as well as the various duties of those judges. If we want an educated, experienced and well-tempered judiciary, we must do more than elect judges because the electorate is not informed.

It is difficult being a candidate for the judiciary. *Republican Party of Minnesota v. White* gives me the ability to speak on certain cases or issues before me but judicial ethics prevents that. It is improper and difficult for a candidate to speak out when he or she is in a position to make determinations. One side or the other will consider the judge partial and biased when or if their particular issue comes before him or her. That perception is damaging to our judiciary.

Judges need to make hard and unpopular choices. The third branch of government exists to safeguard citizens. It is difficult to make hard choices when a judge faces a contested election every six years. Senate Joint Resolution 2 solves the problem and provides Nevada an impartial and unbiased judiciary.

I welcome the evaluation process. Only Clark and Washoe Counties evaluate judges. The evaluation in Washoe County is done by a limited number of attorneys from the Washoe County Bar Association who appeared a number of times before the judge and had knowledge of the judge's performance. Clark County's evaluation is done by a newspaper. Judges across the state would benefit from one uniform evaluation.

SENATOR WASHINGTON:

I received numerous e-mails concerning S.J.R. 2, and most are against the resolution. Please respond to one particular comment.

Please vote no on S.J.R. 2. I do not want our judges to be appointed. I want to maintain the right to vote for our judges, for the Supreme Court and the district court. It seems our local and state and federal representatives are working hard to return our republic to a socialistic monarchy.

This is the voting public. How do you reply to individuals who say their right to vote for Nevada Supreme Court and district court judges is being taken away?

JUDGE ROBB PECK:

That is not my perception of S.J.R. 2. The voting public still has the retention vote, which is important. I went to law school in California when there was a contested retention election with regard to a Supreme Court justice who was not retained. Citizens have an important role. The 60-percent number is significant. The retention vote is taken seriously, and this resolution preserves it.

SENATOR MCGINNESS:

You indicated people were unable to make an informed decision in selection of judges. Why is the decision to select judges more difficult than selecting governors or state senators?

JUDGE ROBB PECK:

In the case of governors or senators, candidates may talk with the electorate regarding their position. Judges are not able to do that. *Republican Party of Minnesota v. White* gave judges the ability to speak on issues before them although they cannot speak on specific cases. The problem is taking sides. When a judge takes sides, has a platform and becomes a candidate as opposed to a judicial officer, there is no longer an unbiased judiciary and the system is damaged.

SENATOR CARE:

Would the Commission contemplated in this resolution be free of the external political process? For example, someone of influence in the state might have a friend who sits on the Commission and says, "Let me make a phone call."

JUDGE ROBB PECK:

I am not in a position to guarantee the Commission would be free of that type of political pressure. In my experience, when the evaluating committee consists

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of more than one or two people and the members are from varied backgrounds, those concerns are alleviated. The way the resolution is drafted contemplates the Commission consisting of six individuals. I suggest that number be expanded by a couple of positions. Mr. Beesley's suggestion that the Dean of the William S. Boyd School of Law serve as a member of the Commission also alleviates concern. More members narrow the chances of one member hijacking the Commission. People appointed to Commissions do their best.

SENATOR CARE:

In striving for judiciary independence, there would also be independence among those responsible for appointments.

JUDGE ROBB PECK:

I assume members of the evaluation and selection committees would be the same. The selection committee would be balanced to include only so many members from each political party to make it well-rounded for this type forum.

RICHARD J. MORGAN (Dean, William S. Boyd School of Law, University of Nevada, Las Vegas):

I speak as an individual because the Boyd School of Law does not take a position on this matter. I support S.J.R. 2 because an independent, impartial judiciary is essential to the preservation of the freedoms and rights of all voters. In the final analysis, taxpayers are at the hands of the courts. The Legislative Branch and Executive Branch are the majoritarian branches of government, elected in partisan campaigns by the majority, and you do the will of the majority a great deal of the time. It is supposed to be that way.

Judges are the third, non-majoritarian branch of government. They take unpopular positions and uphold the *Constitution of the State of Nevada* and the nation in the face of legislative excesses, police abuses and so forth. We want a good, strong and independent judiciary. I would say to Senator Washington's constituent, "By electing judges, you ultimately weaken your protection as a citizen of the United States because a judge who is elected will have two eyes on the electorate and not on the Constitution and the rights and freedoms of the people."

In this day and age, our rights and freedoms are threatened in all sorts of ways. Externally and internally, a fair, impartial, strong and independent judiciary is required. Judges should not be politicians—but they are at the moment. Judges

campaign, raise funds, call each other names and cast aspersions. As soon as the campaign is over, they don black robes and have the majesty and dignity of the court after having been called every name in the book by their opponents. It will only get worse. *Republican Party of Minnesota v. White* will lead to partisan judicial elections, and there will ultimately be no difference between elections for judges and senators.

Another aspect of elections is fund-raising, which takes a tremendous amount of judicial time and results in the appearance of lack of impartiality. If a judge raises a substantial amount of money from a lawyer or a party appearing before him or her, the losing side doubts the judge's impartiality. People want to get a fair shake from the courts.

Senate Joint Resolution 2 is a better approach. Although some politicking affects the selection process, the money and negative campaigning will be eliminated, making two steps in the right direction. The Governor is politically accountable for the selection of bad judges. No one is held accountable for selection of bad judges. The voting public is responsible for selecting mediocre or bad judges. This resolution holds the Governor politically accountable.

JAMES W. HULSE (Common Cause/Nevada):

I am a retired professor from the University of Nevada, Reno and, for many years, the president and vice president of Common Cause/Nevada. We worked on this issue for a long time. Much of what I have to say has been eloquently said by Senator Raggio, members of the State Bar of Nevada, Judge Robb Peck and Dean Morgan.

I will read a paragraph from a report issued by the Progressive Leadership Alliance of Nevada (PLAN) entitled "The Supreme Jackpot II—A Study of Campaign Contributions to Nevada Supreme Court Candidates 2004" (Exhibit M). It is a bit out of date because it focuses upon the 2004 election. In the report, a recommendation is made that a commission or study group be appointed, which has been trumped by Senator Raggio and S.J.R. 2.

The report says:

As this fine study by PLAN shows, the amount of money pumped into the campaigns for Justices of the Nevada Supreme Court has escalated in recent years. Justices typically receive substantial

campaign contributions from special interest groups who often have legal cases pending in the court. This happens even when incumbent justices are unopposed!

Something needs to be done. We have gone beyond the appearance of corruption. The public, attorneys and judges are disillusioned with the current way Nevada selects and elects judges. I join Senator Raggio in saying Nevada has been fortunate in having good justices and judges, and many came in by the appointment process.

Laurance M. Hyde, Jr., retired dean and founder of the National Judicial College at the University of Nevada, Reno, said S.J.R. 2 has been well-conceived and drafted, which is strong testimony in favor of the resolution.

SENATOR WASHINGTON:

Please explain why the United States founders considered appointing judges a better procedure than voting for them.

MR. MORGAN:

In the federal system, judges are appointed for life by the United States President, subject to Senate confirmation. There is no retention election, and judges are removable only on impeachment. The reason for this was to maximize the independence of the judiciary. The framers of the U.S. Constitution and authors of the Federalist Papers wanted judges to be strong and independent in the protection of the constitutional rights and freedoms of the citizens. In the checks and balances scheme, the two majoritarian branches, the executive and legislative, are checked by the judicial branch, which is non-majoritarian.

States have a different kind of scheme with separation of powers. The executive, judicial and legislative branches have assigned duties and responsibilities and do not usurp one another's powers. Many states choose to elect judges. Nevada made the choice when its Constitution was adopted. We suggest voters of Nevada be given the opportunity to join other states that have amended their constitutions to move away from the election process toward the federal system. Although this would not be the federal system, it would provide an opportunity for voters to cull out mediocre or poor judges in a retention election every few years.

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SENATOR WASHINGTON:

Several election cycles ago, a petition was on the ballot to institute term limits on both legislators and judges. Judges deemed that provision in the petition unfit and unconstitutional. Based on the *Constitution of the State of Nevada*, why would it be unconstitutional for judges to have term limits but not legislators?

MR. MORGAN:

It may have been a separation of powers issue.

SENATOR CARE:

At times, a candidate wins office but has campaign debt. Has PLAN considered contributions to judicial candidates who win but need to retire their debt?

MR. HULSE:

Paul Brown of PLAN in Las Vegas did the study, although we helped fund and distribute it. I was not privy to the study and do not know whether Mr. Brown addressed the problem of retiring debt. Common Cause deems collecting money to retire debt as potentially corrupting and appearing as a possible conflict of interest. Common Cause worries when a public official receives money for elective office. Judges suffer from the perception that money can buy influence.

JANINE HANSEN (Nevada Eagle Forum):

The national president of Eagle Forum is Phyllis Schlafly, an attorney who wrote a book titled *The Supremacists* which addresses the imperial judiciary and national abuses by unelected federal judges. Two issues are the Pledge of Allegiance and Ten Commandments. The Nevada Eagle Form is concerned S.J.R. 2 will create a system similar to the federal judiciary, which is unscrutinized, and the concerns and will of the people are ignored. It is an undemocratic way to select judges independent of the people.

A time frame of six weeks before the general election is not adequate with the primary three months ahead. We publish the voter guide shortly after the primary and always include the Nevada Supreme Court. We ask the Committee to consider the time frame issue in order that voters receive some nominal information.

Page 4 of S.J.R. 2 addresses the manner in which individuals will be selected for the Commission. Line 15 indicates there should not be more than one member from the same political party. Once again, we see minority parties left out of everything, and they will be left out of this as well because there will be one Republican and one Democrat.

The Independent American Party has over 44,000 members and is the third largest party in Nevada; the Constitution Party is the third largest in the nation. The reason we have almost tripled in the past few years is due to people's dissatisfaction with the status quo, which ignores the will of the people. The discussion of the uninformed electorate was interesting. We all feel that way at times when running for office or working on issues, but many issues do not surface to people's awareness. One issue in regard to the courts was *Governor v. State Legislature*, 119 Nev. 277, 71 P.3d 1269 (2003). It was due to fear that the Chief Justice did not run again and the reason one of the justices who wrote the decision was defeated. The public understood what happened well enough and decided to change judges.

Senate Joint Resolution 2 will secure the good-old-boy system as a closed shop allowing no outsiders. My brother, Joel Hansen, ran for the Nevada Supreme Court and led in the polls until the Governor went on automated calling to support my brother's opponent. A person like my brother, with a history of battling controversial issues in the courts, including the Nevada Supreme Court, would never find acceptance in this closed shop.

MS. HANSEN:

Previous testifiers said the Governor would be the one to blame, but that is not the case. This legislation requires the Commission on Judicial Selection to allow the Governor three appointments. If he refuses those three, he is allowed three more. He is limited to those three appointments. The Governor is not to blame; the Commission is to blame. Appointee names will probably be unbeknownst to the public at large, thereby keeping them an uninformed electorate because they cannot vote on appointees.

Senator Care brought up the issue of whether the Selection Commission will be political. You bet they will. There is no way to avoid it. You do not live in the real world if you think they will not be subject to political appointment. Controversial people who do not fit the mold will be excluded.

It is important to look at review standards with which people are not necessarily concerned. An example was their opposition to those who supported the *Governor v. State Legislature* decision. The Nevada Supreme Court was embarrassed by that decision and rewrote it to no longer use that standard. They were influenced by public concerns. It is good for them to be scrutinized by the public and subject to their direction.

Do we want stability? If stability is corruption, we do not want stability. Do we want impartiality? Not if impartiality does not expose what is really happening. We want to protect the right of people to be judged by those who reflect their particular point of view. In states such as Massachusetts and New Jersey where people have supported traditional marriage, judges have forced things such as same-sex marriage and civil unions in opposition to the desires of the legislature and people. We do not want an imperial judiciary that is not subject to review by the people who are subject to its decisions.

We voted on this in the past and are glad to vote on it again. We heard a political action committee will be established to promote taking away people's right to vote. We will do what we can to preserve that right. Although we understand the problems in the judiciary, we do not feel S.J.R. 2 is the answer. The discussion today might help without radically changing the present system that allows people the right to vote.

SENATOR CARE:

The e-mail read by Senator Washington is typical of some I received. The refrain is, "You are taking away our rights." Let me ask you about the will of the people. Let us suppose a candidate for state court judge is bankrolled. He knows it will be a popular issue and proclaims, "I promise if you elect me, at every single bench trial for drinking under the influence, I will convict the defendant; I do not care what the evidence says." Or the family court judicial candidate who says, "I will always give custody to the mother because that is the way it ought to be." Would that bother you?

MS. HANSEN:

Certainly, it would bother me. Those problems exist at all levels wherever people are elected and might be scrutinized at some point in time. There have been abuses in a system that apparently is 44-percent appointed. There are abuses in government, which is why the price of liberty is eternal vigilance. We

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must always be vigilant in electing judges. Citizens are not always as vigilant as they should be.

LYNN CHAPMAN (Vice President, Nevada Families):

The City of Ashland, Oregon, published a white paper on election versus appointment in 2005, which stated the election of judges connects government to the citizens. The community retains more control over local justices, and an elected judge can better withstand political pressure. I am neither Republican nor Democrat, and I am not picking on anybody. An interesting example of things that can happen was illustrated by an August 8, 2003, article in the *Gotham Gazette*:

In order to become a state Supreme Court Judge in Brooklyn, a candidate must be selected by Chairman Norman. Those candidates are then referred to a screening panel that is also appointed by Chairman Norman. The 42 Democratic District leaders, who often have strong ties to the party, then screen the candidates. Finally, the judges are selected by a judicial convention, made up of various friends, relatives, business partners and employees of the party overseen by Chairman Norman.

There might be a better way to invent a wheel that has been working for a long time, but it does not always work. The International Association of Women Judges, at their eighth biennial conference in May 2006, said:

Let's not forget that 150 years ago many states changed to election of judges to avoid politics, to keep the governor from appointing only his buddies or his largest campaign contributor as a judge. Many have argued that an elective system favors women and minorities who are not "insiders" and would never be appointed to the bench. When these outsiders are competent and talented, they can win elections. Deborah Agosti, former Chief Justice of Nevada, favors election of judges, saying she could never have become a judge, much less Chief Justice, in an appointive system.

I ran for Washoe County Public Administrator and neither raised nor spent any money, had no signs, did not campaign and received more than one-third of the

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votes. I am not in favor of S.J.R. 2; most of my other concerns were addressed by Janine Hansen.

DAVID K. SCHUMANN (Nevada Committee for Full Statehood):

In the state of Vermont, if you rape a little girl or molest a little boy, you get 60 days in jail. There have been several of those cases in the last couple years. That type of thing follows a merit selection through nominating committee. Corruption is terrible, and the Legislature needs to do something about it. It does not have a thing to do with how judges came to their positions. They, personally, are corrupt. There will be no magic bullet in going to this Commission on Judicial Selection.

Senator Care's hypothetical phone call takes place in states with that type of system. The idea that bad influences come out of this is nonsense. The idea that I can buy a judge for \$100 or \$1,000 is not true. We need laws that deal with judicial misconduct, and we do not need to change the selection method to accomplish it.

Pennsylvania has partisan elections—we have nonpartisan elections. Pennsylvanians run as Democrats and Republicans and try to convince people they will be decent judges. You can sense what a person is by talking to him or her. It is good for judges to muddy their skirts and talk with the peasants to see what they are thinking. The notion that people who are not lawyers cannot have informed decisions on judicial affairs is nonsense.

JOHN L. WAGNER (The Burke Consortium):

Senator Raggio made good arguments; when he speaks, I listen. There are abuses in the system. I am concerned with Senator Nolan's comments that we investigate charges made by the three earlier testifiers in regard to certain judges. Judicial misconduct should be rectified; however, S.J.R. 2 will not take care of it.

In the last election, State Question No. 9 concerning appointment of the Board of Regents was voted down by a majority of voters. People will not pass appointment of judges because they did not approve gubernatorial appointment of certain members to the Board of Regents.

SHEILA M. WARD:

I will read my prepared testimony (Exhibit N) opposing S.J.R. 2.

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CHAIR AMODEI:

The hearing is closed on S.J.R. 2 and opened on S.B. 148.

**SENATE BILL 148**: Revising certain provisions of the Uniform Principal and Income Act (1997) governing disbursements made from principal and income. (BDR 13-903)

LEWIS SHUPE:

I will read my prepared testimony (Exhibit O) in support of S.B. 148.

SENATOR CARE:

I would like a copy of your remarks for my review. You are seeking an amendment to a Uniform Principal and Income Act adopted in 2003. As a Uniform Law Commissioner, I know something about this. I forwarded your proposed legislation to the Chicago headquarters for the National Conference of Commissioners on Uniform State Laws (NCCUSL). We are allowed flexibility in the language on uniform acts from state to state, but it is discouraged. Please send a copy of your statement; I will forward it to Chicago for review to see whether NCCUSL is amenable to changing the Uniform Act. Although the decision is ultimately up to the Legislature, we are interested in hearing from Chicago.

MR. SHUPE:

You should have a copy of my letter to Senator Wiener (Exhibit P), and I will send a copy of my statement. May I complete my statement?

CHAIR AMODEI:

You will be allowed to complete your statement. I will put S.B. 148 on a work session, and you will receive notice. Prior to the work session, S.B. 148 will be reopened, and you will have the opportunity to provide additional testimony on this matter. This gives you a chance to work with Senator Care and confer with Messrs. Lee, Mowry and Uffelman, who are present to testify on S.B. 148. Those gentlemen also have the opportunity to testify upon the reopening of the bill.

Mr. Wilkinson is available to coordinate discussions between now and the work session and will inform you of the activities.

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**Testimony of  
Senator William Raggio**

**Senate Judiciary Committee  
March 8, 2007**

Senate Joint Resolution No. 2 proposes to amend the Nevada Constitution to provide for the initial appointment by the Governor of Justices of the Supreme Court and Judges of the District Court. After the initial appointment, if a Justice or Judge wishes to serve another term, he or she must make a declaration of candidacy for a retention election. If 60 percent or more of the votes cast are in favor of the retention of the Justice or Judge, he or she will then serve a 6-year term and must run in a retention election if another 6-year term is desired. If the Justice or Judge does not make a declaration of candidacy for a retention election or if less than 60 percent of the votes cast are in favor of retention, a vacancy is created at the end of the term which must be filled by appointment by the Governor.

SJR 2 also requires each Justice or Judge who has made a declaration of candidacy for a retention election to undergo a review of his or her performance as a Justice or Judge. This resolution creates the Commission on Judicial Performance and requires the Commission to perform these reviews. The review of each Justice or Judge is required to consist of a review of the record of the Justice or Judge and at least one interview of the Justice or Judge. At the conclusion of this review, the Commission is required to prepare and release to the public a report containing information about the review and a recommendation on the question of whether the Justice or Judge should be retained.

*in large measure*

I have proposed this amendment of the constitution because too often judicial elections become embroiled in politics. This appointment system with retention elections would remove judges from partisan politics and would free judges from the necessity of *submitting* ~~taking~~ political contributions from attorneys, law firms, litigants and potential litigants (the usual source of financial contributions in judicial elections).

The District of Columbia and ~~twenty~~ <sup>twenty</sup> three states, which are among the most progressive in judicial reform, have adopted a nominating commission plan for appointing judges to an initial term on the bench. Fifteen of these states also hold retention elections at the expiration of judges' terms. The people of Nevada have already approved an amendment to our Constitution which provides for a Judicial Selection Commission to make recommendations for ~~filing~~ <sup>filling</sup> vacancies at the Supreme Court and District Court level. It is this commission that ~~I propose~~ <sup>is proposed</sup> to make nominations for the initial appointments by the Governor.

SJR 2 contains the best features of all of the merit selection plans. Similar proposals have been before this body and the electorate in past years, but were defeated. The events which have occurred since these measures were considered fully justify that this issue be submitted to the people of this state for further consideration.

*Enlarge on this*

SJR 2 is intended to ensure <sup>insofar as possible</sup> an independent judiciary. It will enable a judge to devote his or her entire time to the business of the court since the judge will not take part in the usual political campaigns. The plan ensures that full consideration will be given to the ability, character and qualifications of a judicial candidate before that person's name is permitted to go on the ballot and will cause the attention of voters to be focused on a

judge's record, making it easier to remove incompetent judges from office and to retain judges whose records are meritorious.

SJR 2 will encourage well-qualified people to serve on the bench who would not submit themselves to the ordeal of campaigning for office under the political system or who lack the means of financing such a campaign. I believe it is time to give the people of this state an opportunity to ensure an independent judiciary in this state

**Selection through Nominating Commission  
for Supreme Court**

1. Alaska	Retention Election (10 years)
2. Arizona	Retention Election (6 years)
3. Colorado	Retention Election (10 years)
4. Connecticut	
5. Delaware	
6. District of Columbia	
7. Florida	Retention Election (6 years)
8. Hawaii	
9. Indiana	Retention Election (10 years)
10. Iowa	Retention Election (8 years)
11. Kansas	Retention Election (6 years)
12. Maryland	Retention Election (10 years)
13. Massachusetts	
14. Missouri	Retention Election (12 years)
15. Nebraska	Retention Election (6 years)
16. New Mexico	
17. New York	
18. Oklahoma	Retention Election (6 years)
19. Rhode Island	
20. South Dakota	Retention Election (8 years)
21. Tennessee	Retention Election (8 years)
22. Utah	Retention Election (10 years)
23. Vermont	
24. Wyoming	Retention Election (8 years)



# Judicial Selection in the States

## Appellate and General Jurisdiction Courts

### “Initial Selection, Retention, and Term Length”

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>Alabama</b>						
Supreme Court			X		6	Re-election (6 year term)
Court of Civil App.			X		6	Re-election (6 year term)
Court of Criminal App.			X		6	Re-election (6 year term)
Circuit Court			X		6	Re-election (6 year term)
<b>ALASKA</b>						
Supreme Court	X				3	Retention election (10 year term) <sup>1</sup>
Court of Appeals	X				3	Retention election (8 year term)
Superior Court	X				3	Retention election (6 year term)
<b>ARIZONA</b>						
Supreme Court	X				2	Retention election (6 year term)
Court of Appeals	X				2	Retention election (6 year term)
Superior Court (county pop. greater than 250,000)	X				2	Retention election (4 year term)
Superior Court (county pop. less than 250,000)			X		4	Re-election (4 year term)
<b>ARKANSAS<sup>2</sup></b>						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
<b>CALIFORNIA</b>						
Supreme Court		X(G)			12	Retention election (12 year term)
Courts of Appeal		X(G)			12	Retention election (12 year term)
Superior Court <sup>3</sup>			X		6	Nonpartisan election (6 year term) <sup>4</sup>

1. In a retention election judges run unopposed on the basis of their record.

2. In November 2000, Arkansas voters passed an amendment to the Arkansas constitution shifting judicial elections to a nonpartisan system.

3. The California constitution provides that local electors may choose gubernatorial appointments instead of nonpartisan election to select superior court judges. To date, no counties have chosen gubernatorial appointments.

4. If the election is uncontested, the incumbent's name does not appear on the ballot.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>COLORADO</b>						
Supreme Court	X				2	Retention election (10 year term)
Court of Appeals	X				2	Retention election (8 year term)
District Court	X				2	Retention election (6 year term)
<b>CONNECTICUT</b>						
Supreme Court	X				8	Commission reviews incumbent's performance on noncompetitive basis; governor renominates and legislature confirms
Appellate Court	X				8	Same
Superior Court	X				8	Same
<b>DELAWARE<sup>5</sup></b>						
Supreme Court	X				12	See Footnote 6
Court of Chancery	X				12	See Footnote 6
Superior Court	X				12	See Footnote 6
<b>DISTRICT OF COLUMBIA</b>						
Court of Appeals	X				15	Reappointment by judicial tenure commission <sup>7</sup>
Superior Court	X				15	Reappointment by judicial tenure commission <sup>7</sup>
<b>FLORIDA</b>						
Supreme Court	X				1	Retention election (6 year term)
District Court of Appeal	X				1	Retention election (6 year term)
Circuit Court			X		6	Re-election for additional terms
<b>GEORGIA</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Superior Court			X		4	Re-election for additional terms
<b>HAWAII</b>						
Supreme Court	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)
Intermediate Court of Appeals	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)
Circuit Court and Family Court	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)

5. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

6. Incumbent reapplies to nominating commission and competes with other applicants for nomination by the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.

7. Initial appointment is made by the President of the United States and confirmed by the Senate. Six months prior to the expiration of the term of office, the judge's performance is reviewed by the tenure commission. Those found "Well Qualified" are automatically reappointed. If a judge is found to be "Qualified" the President may nominate the judge for an additional term (subject to Senate confirmation). If the President does not wish to reappoint the judge, the District of Columbia Nomination Commission compiles a new list of candidates.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>IDAHO</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
District Court			X		4	Re-election for additional terms
<b>ILLINOIS</b>						
Supreme Court				X	10	Retention election (10 year term)
Appellate Court				X	10	Retention election (10 year term)
Circuit Court				X	6	Retention election (6 year term)
<b>INDIANA</b>						
Supreme Court	X				2	Retention election (10 year term)
Court of Appeals	X				2	Retention election (10 year term)
Circuit Court				X	6	Re-election for additional terms
Circuit Court (Vanderburgh County)			X		6	Re-election for additional terms
Superior Court				X	6	Re-election for additional terms
Superior Court (Allen County)			X		6	Re-election for additional terms
Superior Court (Lake County)	X <sup>a</sup>				2	Retention election (6 year term)
Superior Court (St. Joseph County)	X				2	Retention election (6 year term)
Superior Court (Vanderburgh County)			X		6	Re-election for additional terms
<b>IOWA</b>						
Supreme Court	X				1	Retention election (8 year term)
Court of Appeals	X				1	Retention election (6 year term)
District Court	X				1	Retention election (6 year term)
<b>KANSAS</b>						
Supreme Court	X				1	Retention election (6 year term)
Court of Appeals	X				1	Retention election (4 year term)
District Court (seventeen districts)	X				1	Retention election (4 year term)
District Court (fourteen districts)				X	4	Re-election for additional terms
<b>KENTUCKY</b>						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Circuit Court			X		8	Re-election for additional terms
<b>LOUISIANA</b>						
Supreme Court				X <sup>9</sup>	10	Re-election for additional terms
Court of Appeals				X <sup>9</sup>	10	Re-election for additional terms
District Court				X <sup>9</sup>	6	Re-election for additional terms

8. Three of the judges run in partisan elections for 6 year terms then have to be re-elected for additional terms.

9. Louisiana judicial elections are partisan inasmuch as the candidates' party affiliations appear on the ballot. However, two factors lead a somewhat nonpartisan character to these elections: (1) primaries are open to all candidates; and (2) judicial candidates generally do not solicit party support for their campaigns.

State and Court	APPOINTEE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>MAINE</b>						
Supreme Judicial Court		X(G)			7	Reappointment by governor, subject to legislative confirmation
Superior Court		X(G)			7	Reappointment by governor, subject to legislative confirmation
<b>MARYLAND<sup>10</sup></b>						
Court of Appeals	X				See fn 11	Retention election (10 year term)
Court of Special Appeals	X				See fn 11	Retention election (10 year term)
Circuit Court	X				See fn 11	Nonpartisan election (15 year term) <sup>12</sup>
<b>MASSACHUSETTS<sup>13</sup></b>						
Supreme Judicial Court	X				to age 70	
Appeals Court	X				to age 70	
Trial Court of Mass.	X				to age 70	
<b>MICHIGAN</b>						
Supreme Court				X <sup>14</sup>	8	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
<b>MINNESOTA</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
District Court			X		6	Re-election for additional terms
<b>MISSISSIPPI</b>						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Chancery Court			X		4	Re-election for additional terms
Circuit Court			X		4	Re-election for additional terms
<b>MISSOURI</b>						
Supreme Court	X				1	Retention election (12 year term)
Court of Appeals	X				1	Retention election (12 year term)
Circuit Court				X	6	Re-election for additional terms
Circuit Court (Jackson, Clay, Platte, Saint Louis Counties)	X				1	Retention election (6 year term)
<b>MONTANA</b>						
Supreme Court			X		8	Re-election; unopposed judges run for retention
District Court			X		6	Re-election; unopposed judges run for retention
<b>NEBRASKA</b>						
Supreme Court	X				3	Retention election (6 year term)
Court of Appeals	X				3	Retention election (6 year term)
District Court	X				3	Retention election (6 year term)

10. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

11. Until the first general election following the expiration of one year from the date of the occurrence of the vacancy.

12. May be challenged by other candidates.

13. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

14. Although party affiliations for Supreme Court candidates are not listed on the general election ballot, candidates are nominated at party conventions.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>NEVADA</b>						
Supreme Court			X		6	Re-election for additional terms
District Court			X		6	Re-election for additional terms
<b>NEW HAMPSHIRE<sup>15</sup></b>						
Supreme Court		X(G) <sup>16</sup>			to age 70	
Superior Court		X(G) <sup>16</sup>			to age 70	
<b>NEW JERSEY</b>						
Supreme Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
Appellate Division of Superior Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
Superior Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
<b>NEW MEXICO</b>						
Supreme Court	X				until next general election	See Footnote 17
Court of Appeals	X				until next general election	See Footnote 17
District Court	X				until next general election	See Footnote 17
<b>NEW YORK</b>						
Court of Appeals	X				14	See Footnote 18
Appellate Division of the Supreme Court	X				5	Commission reviews and recommends for or against reappointment by governor
Supreme Court				X	14	Re-election for additional terms
County Court				X	10	Re-election for additional terms
<b>NORTH CAROLINA</b>						
Supreme Court			X <sup>19</sup>		8	Re-election for additional terms
Court of Appeals			X <sup>19</sup>		8	Re-election for additional terms
Superior Court			X		8	Re-election for additional terms
<b>NORTH DAKOTA</b>						
Supreme Court			X		10	Re-election for additional terms
District Court			X		6	Re-election for additional terms

15. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

16. The governor's nomination is subject to the approval of a five-member executive council.

17. Partisan election at next general election after appointment for eight-year term for appellate judges, six-year term for district. The winner thereafter runs in a retention election for subsequent terms.

18. Incumbent reapplies to nominating commission and competes with other applicants for nomination to the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.

19. Beginning in 2004, these elections will be nonpartisan.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>OHIO</b>						
Supreme Court				X <sup>20</sup>	6	Re-election for additional terms
Court of Appeals				X <sup>20</sup>	6	Re-election for additional terms
Court of Common Pleas				X <sup>20</sup>	6	Re-election for additional terms
<b>OKLAHOMA</b>						
Supreme Court	X				1	Retention election (6 year term)
Court of Criminal Appeals	X				1	Retention election (6 year term)
Court of Appeals	X				1	Retention election (6 year term)
District Court			X		4	Re-election for additional terms
<b>OREGON</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
Tax Court			X		6	Re-election for additional terms
<b>PENNSYLVANIA</b>						
Supreme Court				X	10	Retention election (10 year term)
Superior Court				X	10	Retention election (10 year term)
Commonwealth Court				X	10	Retention election (10 year term)
Court of Common Pleas				X	10	Retention election (10 year term)
<b>RHODE ISLAND</b>						
Supreme Court	X				Life	
Superior Court	X				Life	
Worker's Compensation Court	X				Life	
<b>SOUTH CAROLINA</b>						
Supreme Court		X (L) <sup>21</sup>			10	Reappointment by legislature
Court of Appeals		X (L) <sup>21</sup>			6	Reappointment by legislature
Circuit Court		X (L) <sup>21</sup>			6	Reappointment by legislature
<b>SOUTH DAKOTA</b>						
Supreme Court	X				3	Retention election (8 year term)
Circuit Court			X		8	Re-election for additional terms

20. Although party affiliations for judicial candidates are not listed on the general election ballot, candidates are nominated in partisan primary elections.

21. South Carolina has a 10 member Judicial Merit Selection Commission that screens judicial candidates and reports the findings to the state's General Assembly. Since 1997, the Assembly is restricted to voting only on those candidates found qualified by the Judicial Merit Selection Commission. However, the nominating commission itself is not far removed from the ultimate appointing body, and cannot be considered to be nonpartisan as control over member nominations is vested in majority party leadership. Although most nominating commissions contain members appointed by the governor or legislature, no other commissions actually contain the governor or current legislators who have final approval over the candidate as voting members of the commission. In contrast, the Judicial Merit Selection Commission in South Carolina contains 6 current members of the General Assembly appointed by the Speaker of the House of Representatives, the Chairman of the Senate Judiciary Committee, and the President Pro Tempore of the Senate. State legislators also choose the remaining 4 members of the Commission who are selected from the general public.

?

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>TENNESSEE</b>						
Supreme Court	X				until next biennial general election	Retention election (8 year term)
Court of Appeals	X				until next biennial general election	Retention election (8 year term)
Court of Criminal Appeals	X				until next biennial general election	Retention election (8 year term)
Chancery Court				X	8	Re-election for additional terms
Criminal Court				X	8	Re-election for additional terms
Circuit Court				X	8	Re-election for additional terms
<b>TEXAS</b>						
Supreme Court				X	6	Re-election for additional terms
Court of Criminal Appeals				X	6	Re-election for additional terms
Court of Appeals				X	6	Re-election for additional terms
District Court				X	4	Re-election for additional terms
<b>UTAH</b>						
Supreme Court	X				First general election	Retention election (10 year term)
Court of Appeals	X					Retention election (6 year term)
District Court	X					Retention election (6 year term)
Juvenile Court	X				3 years after appointment	Retention election (6 year term)
<b>VERMONT</b>						
Supreme Court	X				6	Retained by vote of General Assembly (6 year term)
Superior Court	X				6	Retained by vote of General Assembly (6 year term)
District Court	X				6	Retained by vote of General Assembly (6 year term)
<b>VIRGINIA</b>						
Supreme Court		X(L)			12	Reappointment by legislature
Court of Appeals		X(L)			8	Reappointment by legislature
Circuit Court		X(L)			8	Reappointment by legislature
<b>WASHINGTON</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Superior Court			X		4	Re-election for additional terms
<b>WEST VIRGINIA</b>						
Supreme Court				X	12	Re-election for additional terms
Circuit Court				X	8	Re-election for additional terms

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>WISCONSIN</b>						
Supreme Court			X		10	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
<b>WYOMING</b>						
Supreme Court	X				1	Retention election (8 year term)
District Court	X				1	Retention election (6 year term)



POLICE DEPARTMENT

# City of Reno

POST OFFICE BOX 1900 RENO, NEVADA 89505

February 16, 1996

Honorable Mills B. Lane  
District Court Judge Department 9  
Washoe County Court House  
P.O. Box 11130  
Reno, NV 89520

Re: Reno Police Department Case # 187728-95

Dear Judge Lane:

Enclosed is a copy of the above reference case report. The report was made by Mrs. Jonja F. Brown, regarding the disappearance of potential evidence from the Court's evidence facility. Mrs. Brown has previously reported that she believed members of the Washoe County Sheriffs Department's Forensic Investigations Unit had perjured themselves when testifying against her brother Noland Edward Kline in the late 80's. Mr. Kline was convicted and Mrs. Brown has been seeking to overturn that conviction through further investigation, appeal, and legal challenges.

Mrs. Brown's prior case was recorded under the same case number. The Police Department investigated that case which alleged perjury and miss-handling of evidence prior to its presentation in court. That investigation disclosed no perjury occurred, and evidence introduced at the time of trial was handled appropriately under the law. Mrs. Brown was advised of the findings and briefed by Detective Dave Jenkins on the investigation. At that time Mrs. Brown related that she understood the findings and could find no conflict in the conclusions reached.

The current allegation is that someone entered the court's evidence facility and removed filters from cigarettes introduced at the time of trial. Mrs. Brown believes that the missing filters contain DNA evidence that is exculpatory for her brother. Per our telephone conversation this case is being forwarded to you for your review and discretion.

the only way to stop  
corrupted judges - present  
their own family & friends  
Judges Lane & McGee  
and our Supreme court justices  
reaffirm their right  
Shelly March 2nd  
perjury -

supports  
S.S.R. 2

conflict of interest  
7afro  
credible  
Grand Jury  
maddox  
crisis  
concise, consistency

On pages 15 & 16 Bailiff Eddings was asked about sitting on the bench. "We told her it wasn't her right to sit there and it was, I can't remember, it was either Annie or Robert Stetsman that tried to explain to her that if she went through the metal detector she could sit down over there but she had to go through the metal detector first."

When Bailiff, Anne Jones testified she was asked the same question. Her response was pg 79, when asked, Q. "And did you or anyone else tell Me. Brown she could clear the security area and sit on the bench on the other side? No, sir, we did not." And they both said that it was okay for me to sit on the bench in the foyer.

Pg 43. Bailiff Eddings is asked. Q. "Now, is it your testimony here today that Ms. Brown did not claim she had a back injury and was handicapped while you were handcuffing her?" A. "She, I believe she said that before." Q. "Was she complaining about that again while you were arresting her and handcuffing her and putting her face down on the floor?" A. "Not that I recall."

Pg. 57 Bailiff Jones is asked. Q. "Now, you said she was screaming she was handicapped and that sort of thing; is that right? A. "Yes, sir.

Pg. 90. A. I know she was screaming and yelling, you know. — I remember her saying is she's got a back injury, she's handicapped, and then Officer Eddings actually had to take her down because of her resisting, take her down and take the other arm, and yes, she was probably saying, "You're hurting me, ouch, you're hurting me." There are other parts of her testimony that refer to me being handicapped has Mr. Eddings is arresting me.

Pg. 33. Eddings is asked. Q. Now, did you tell her that she should calm down or she would have leave? A, I can't recall saying that, NO." Q. "Settle down or leave"; does that sound familiar?" A. That doesn't ---- I can't recall that. Q. Well, if Anne Jones says that's what happened, you wouldn't dispute that, would you? A. No.

Pg 44. Q. And you were saying, "If you don't calm down, you'll have to leave. Settle down or you'll have to leave"? A. "I could have said that. I don't remember saying them exact words. I know I told her several times that she had to leave or she would placed under arrest". Q. But you never told her to leave the building, correct? A. "Right."

commission Judicial Selection ~~Commission~~  
Name Wake/SR  
7afro  
EXHIBIT F Senate Committee on Judiciary  
Date: 3-8-07 Page 1 of 1  
courthouse  
45

# Judicial panel releases disciplinary document on Fallon justice of peace

BY MARLENE GARCIA  
Nevada Appeal News Service

Justice of the Peace Dan Ward has until May 31 to complete a 30-day suspension without pay imposed by the Nevada Judicial Discipline Commission last month, according to a formal document made public by the panel on Friday.

The suspension will consist of 30 working days where the judge will not be paid, and is not allowed to use vacation or other accumulated leave.

The document, signed by commission Chairman Steve Chappell, states Ward "must know that he came as close as any judge can to being removed from office. The sheer number and diversity of violations, spread over a prolonged period of time, suggests that whatever (Ward) may have learned during formal classes he attended over a long period of time since he took the bench was either forgotten or ignored to a large degree."

Ward admitted to 107 ethics violations in a negotiated settlement with the judicial commission Jan. 18.

He must also take two ethics courses "on his own dime" and not be permitted to use leave or vacation days. The first is a six-hour class offered by the State Bar of Nevada in April. The commission report states Ward must get permission from the bar to attend the course because he is not a lawyer.

The second two-day course is offered by the National Judicial College in Reno in October.

Ward must pay for both classes, including tuition, books, travel expenses, meals and materials that would be needed.

The commission's decision states commissioners decided against a four-year probationary period, in part because all the



**Justice of the Peace Dan Ward is being disciplined.**

sanctions imposed must be completed before the November election.

If Ward chooses to seek re-election and loses, the issue of probation would be moot, the document states.

Ward did not return a telephone call seeking comment.

Ward admitted to the following violations as outlined in the commission document:

- Failure to disqualify himself in a criminal case involving Michelle Harrison, his son's girlfriend.
- Providing information to his son, Sean Ward, and Harrison about their drug use that he received from another defendant. He did not inform the district attorney about the information or conversations.
- He contacted state investigators with information about allegations regarding his son and Harrison.
- He bought a car from a bail bond company that was the subject of a forfeiture hearing he presided over. The judge still has not paid for the car, telling the commission Dave Banovich has refused to accept payment. The commission suggests Ward find a way to complete the transaction or "he would be wise to divest himself of the asset he gained under a cloud of ethical impropriety."
- That he instructed a Nevada Highway Patrol trooper to per-

form additional investigation in a fatal accident case without telling the district attorney's office. He also delayed issuing a summons in the case without any legal reason.

- He delayed a sexual assault hearing for a friend to try to keep a Lahontan Valley News reporter from covering the case.
- He acted disrespectfully to a lawyer and personally issued a protective order without anyone requesting it.
- He fixed a ticket for the wife of a sheriff's deputy and for a clerk working in the justice court. The deputy's wife had paid the ticket but Ward instructed his court staff to issue a refund, saying it was "another stupid ticket."
- He admitted he contacted a trial witness to discuss a case without notifying the defendant's attorney or the district attorney.
- He used his influence to get his son out of jail on his own recognizance, and discussed with Judge Stephen Grund what conditions should be imposed on the younger Ward's release from jail.
- He did not excuse himself from a DUI case where the defendant was driving a vehicle registered to Ward and Sean Ward. The judge ordered that a towing bill be paid before he sentenced the defendant.



EXHIBIT G Senate Committee on Judiciary  
Date: 3-8-07 Page 1 of 8

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<p>Ⓢ WHEN A STRANGER CALLS (PG-13) 2:20 5:20 7:50 10:10</p> <p>Ⓢ NANNY MACDOUGAL</p>	<p>Ⓢ HOODWINKED (PG) 1:10 3:30 5:30 7:40 (9:50)</p> <p>Ⓢ GLORY ROAD 9:10 5:10 6:00</p>
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ILLIDAY (PG-13)  
7:00 (9:30)  
ING (PG-13)  
J 8:10

# Carson City prosecutor running in Storey County

Staff report

## CANDIDATES FILING

**2006 candidates who filed for elected offices in Storey County on Monday:**

- Assessor  
Kathryn J. Weeks (R)
- Clerk/treasurer  
Lorraine Du Fresne (R)
- Commissioner — District 1  
John Flanagan (R)
- Eric Pierson (R)
- District attorney  
Anne Langer (R)
- Harold Swafford (R)
- Justice of the peace (nonpartisan)  
Annette Daniels
- Sheriff (nonpartisan)  
Stephen Bloyd
- James Miller
- Storey County school board of trustees — seat 2B (nonpartisan)  
Pamela J Smith

Carson City prosecutor Anne Langer is running for Storey County District Attorney, she announced Monday after officially filing.

"I'm looking forward to bringing my experience and energy to work on behalf of Storey County and its citizens," she said.

Langer, 50, and a registered Republican, has been the chief criminal deputy district attorney for Carson City since 1997.



**Anne Langer is running for Storey County District Attorney.**

She now supervises six deputy district attorneys and five administrative staff. She brings a total of 17 years experience working in a Nevada district attorney's office to her election bid.

her election bid.

"I've never run for an elective office before, so I'm excited and really looking forward to getting out and meeting people," she said.

Appointed in the past as a special prosecutor in Storey County, Langer said she is familiar with the local court system, noting that both Storey County and Carson City are in the First Judicial District. She appreciates the small town flavor and history of Virginia City.

"As I've come to know many of the locals, I've been impressed with the pride people take in this community, and their concerns for the big-city problems which exist throughout the region. I think I have a lot to contribute," Langer said.

A veteran prosecutor, Langer was instrumental in setting up the Western Regional Drug Court, which now supervises drug-addicted offenders in Churchill, Mineral, Lyon, Douglas, Carson City and Storey counties. She is also an active team member of the newly created Mental Health Court, which is designed to reduce recidivism and to provide special services to criminal defendants who also have substantial problems with mental illness.

Langer said her experience includes being a deputy district attorney responsible for juvenile cases and child support enforcement for several years. She also worked as a legal advisor for two years for Carson City's Regional Transportation Commission, and occasionally advised the planning commission and the Carson City Board of Supervisors.

"I hope the voters agree to let me spend more time dealing with civil law matters as Storey County District Attorney," she said.

Langer stated she specialized in city government and land-use planning law during law school. She attended the University of the Pacific, McGeorge Law School, graduating in 1986. She also was a 1977 graduate of University of Nevada, Reno, majoring in education, with a minor in languages. Before attending law school, she worked as a school teacher and as a blackjack and baccarat dealer in a casino.

"I learned a lot about life in the 'real world' before law school," she said.

"Storey County is unique. It's a small but growing county. I promise to work hard if elected. I'll be a district attorney with wide-ranging skills and will strive to be fair, reasonable and effective."

Current Storey County District Attorney Harold Swafford filed for re-election on Monday.

# Former chief Carson DA arrested for drunken driving

BY FT. NORTON  
Appeal Staff Writer

The former chief deputy district attorney for Carson City was arrested Monday in Reno on a charge of drunken driving.

Anne Langer, 51, was booked into the Washoe County Jail after her 8:33 p.m. arrest in South Reno.

According to Sgt. Dave Macaulay of the Reno Police Department, a witness reported seeing Langer exit the Atlantis Hotel and Casino about 7:45 p.m. on Monday and suspected she was intoxicated by the way she was walking.

Langer then allegedly got into her vehicle and struck the trailer hitch of another vehicle as she backed out of the parking space.

Macaulay said the witness followed Langer and called police.

Officers stopped her vehicle at Kietzke and Hammill lanes.

Macaulay said the arrest report indicates Langer failed three field sobriety tests, and a preliminary breath test registered a .210 blood-alcohol level, nearly three times the legal limit of .08.

Langer was booked into the Washoe County Jail on suspicion of drunken driving about 9:30 p.m. and was released on her own recognizance some hours later.

Macaulay said officers were unable to locate the vehicle that the witness alleged Langer struck in the Atlantis parking lot.

Langer, who worked for the district attorney's office for 17 years, left the office on

Jan. 31

She ran for Storey County District Attorney in the November election, losing to incumbent Harold Swafford by 37 votes.

"I had a lot of disappointments this year, and I was coping with the use of alcohol," Langer said Wednesday.

"I obviously have a problem, and it needs to be addressed. I made a mistake," she said.

Langer's attorney Scott Freeman said his client intends to accept responsibility for her actions.

"Everything is a learning experience," he said.

• Contact reporter FT. Norton at [fnorton@newspappal.com](mailto:fnorton@newspappal.com) or 881-1213.

# Judge candidate 'victim' of own stupidity, period

What is the question amid revelations that District Court Judge Wayne Pederson was the victim of extortion this summer after having sex in Reno hotel room with a known drug dealer while attending courses at the Nevada Judicial College.

We use the term "victim" loosely only because that is the official tagline given Pederson in the incident reports filed. Reno police dispatched to investigate Pederson's claim that his lover, Irene Bailey, stole his wallet while he was showering and used it to pay off a drug debt. If Pederson is a victim, he is a victim of his own stupidity and appalling poor judgment. He's lucky that all he lost was \$10 to the low-lives who held his wallet for ransom and sold it back to him, one credit card and piece of ID at a time. He's lucky that when he decided to take matters into his own hands he didn't get killed by the inhabitants of Reno's dark underworld.

It's hard to think of Pederson as a "victim," knowing that he had sex with a man he represented on theft charges before he was appointed to the bench. A woman he knew had twice been ordered by the court to enroll in a

drug-rehabilitation program, and twice ran away without completing her treatment.

For a sitting judge to take a woman with this history of substance abuse out for drinks, followed by sex, suggests a wanton disregard for her health and well-being. He, of all people, should understand the precarious nature of Bailey's health, but he chose instead to sacrifice her to his own selfish desires. He knew exactly what he was doing at the time, knew it was wrong, and did it anyway.

This sordid affair wasn't merely a mistake on the judge's part, or as Pederson put it, an "embarrassment." It is a colossal lapse of judgment by a man who has been entrusted by the public to do just the opposite — make good judgments. He is, after all, a judge.

Also troubling is Pederson's decision not to cooperate fully with the police by pressing charges against Bailey, which compromised their ability to prosecute the other parties in the case. Pederson asked that Bailey not be charged, rationalizing that she had already suffered enough embarrassment.

Does this mean the next time a person

accused of theft appears in Judge Pederson's court he will let the individual off if he or she can convince him they're sufficiently embarrassed?

For the citizens of Churchill and Lyon counties, who have a right to expect ethical representation on the bench, this might not come as such a heavy blow if it were not on the heels of another severe breach of public trust on the part of Justice of the Peace Dan Ward, who earlier this year admitted to 107 ethics violations before he was suspended by the Nevada Judicial Discipline Commission.

Between them, these two men have made a mockery of the judicial system and given the public good reason to doubt its honesty and integrity. If you can't trust your judges, for heaven's sake, whom can you trust?

Fortunately, voters still decide who gets the privilege of presiding over Nevada's courts.

They took care of Judge Ward in the August primary by turning thumbs down on his re-election bid.

With the general election less than a month away, the day of reckoning for Judge Pederson is imminent.

— From the Lahontan Valley News

## Judge

BY SHARON CARTER

Appeal Staff Writer

Senior Judge Carl Christensen of Las Vegas was assigned Monday by the Nevada Supreme Court to review a Carson Justice Court decision dropping charges against Carson City attorney Audrey Damonte.

A spokesperson for Nevada Supreme Court Chief Justice Miriam Shearing's office said Christensen was chosen after both Carson City district judges disqualified themselves.

"It was determined that many Northern Nevada judges would likely disqualify themselves," the spokeswoman said.



The impact sustained by Audrey Damonte's vehicle from allegedly striking 42-year-old pedestrian Don Ferris on Dec. 10, 1996 is apparent in this evidentiary photo obtained from the office of District Attorney Noel Waters. Ferris died from a hit and run.

**LEGISLATURE: members of the Assembly: City officials**

**\*\* CITIZENS Law enforcement OVERSITE committee\*\***

**WE THE PEOPLE: CITIZENS FOR JUSTICE members.**

**\*\* ETHICS REFORM is a start \*\***

**We are a grass roots group, just starting this session, as we are the victims of “UNETHICAL” and corrupt law officials who would rather protect their own ... then step up for the community.**

**We are tired of waiting for JUSTICE to fall on top of us, and have chosen to come here to ask that our “Political elected Assembly people to also begin fighting for us.” no one inside the walls of justice actually cares about us, they care more about protecting those we file complaints about, especially if the complaint is against someone in law enforcement! because that person may have damning info. About our very law people, or even judges or the Mayor himself! ... Sadly the DUI charge of the Mayor this week, has needed to take place for more than twenty years. Trust us when we say.... That was not a “once in a lifetime mistake by our Mayor”..... sadly. He was also not drinking alone. Whoever was with him, for that amount of time, drink after drink, also “drove home to their own house drunk!” The paper headline could have read..... MAYOR and SEVERAL other city officials were arrested for DUI, Monday night.**

**If we are going to HAVE ETHICS REFORM Bills on the table, then we need to make sure that all of the people willing to fight for it are heard. Three minutes is not nearly long enough for the few of us here to tell you all of the “Horror stories” behind our battles. We are troops fighting a Judicial WAR... without the weapons! We are unarmed...and these Carson City Sheriffs officials... and Judges have keys to file cab. And cases, and criminal complaints, that they “throw in the garbage”! -- That is the truth. Tampering with evidence is not a new form of action at the CCSO - Carson City Sheriffs Office. That is why I placed a photo of Ms. Powell “handing in a complaint” at the sheriffs office last year inside a packet that I left for the assembly members last wk. Because they were “unable or unwilling” to cough up the several complaints that she’d already filed there! When I took that photo, that gal “was shocked”! What are you doing, she asked? I said, that I was “taking a picture of the EVIDENCE ... of the evidence being handed into her! -- Now there is PHOTO Evidence too!**

**Thank you Assembly members: Sincerely -- Patty Pruet 246-9339**

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Courthouse Forum - The Nation's Repository of Court Information Page 2 of 2

## Citizens for Justice OVERSITE committee

### CITIZEN OVERSITE COMMITTEE

We have had this idea before and were met with a "loud POP!" from law enforcement and the members from our board of supervisors and others in years past. What we have lived with from then until now is no better than children who "act properly in front of their parents but when the parents turn their backs these kids do wrong"! Like it or NOT we do have sheriffs deputies who "Do wrong" when ETHICAL PEOPLE are NOT WATCHING. There are SHERIFFS OFFICIALS who "DO WRONG" when the PUBLIC is UNABLE to SEE what they are doing ... and it is like that almost everywhere in this country. San Fransisco has "THREE OVERSITE GROUPS" -- eyeballing their law officials and people who "Do wrong" within their CITY LAW enforcement. We need to contact them.

We will staff our office with a "paralegal CLA certified reseacher" -- so that we get our "FACTS STREIGHT" and make sure that we UNDERSTAND the LAWS pertaining to each case we touch. We will be NON-PROFIT and run on DONATIONS ... and FUNDRAISING EVENTS. We will use the COURT PUBLIC RECORDS and Investigative documents to help us follow cases such as ... RAPE ... MURDER ... DOMESTIC VIOLENCE ... DRUGS and DRUG DEALING.

We will make sure that DRUGS are not making their way, back out onto our streets through the "willing fingers" of SOME of our drug unit members. Ane we will "INVESTIGATE" -- RUMORS of SOME who have been INVOLVED in past activities of doing a "TURN around PROFIT" for their own financial gain [ BEHIND the SCENES ] while others were NOT able to see their actions. Any Officer cougth dealing in the re-sale of dangerous drugs, should go through the "CRIMINAL PROSECUTION" Just like anyone else. We would have to BRING IN ALL KNOWN DRUG DEALERS from the Community ... and have them testify against the Officer. We would then allow the criminal justice system do what it is supposed to be used for. A Trial should be set for that Officer and he should defend his/her actions.

There have been RUMORS for twenty years that SOME of these TRI-NET Officers were "Drug dealing for profit" and that SOME SHERIFFS had "FULL KNOWLEGE" of these activities and did nothing to stop it. They should also be charged and -- "PROSECUTED" and if found guilty -- "face time behind bars".

Outside of RAPES of children in this town ... sadly we have a HUGE DRUG PROBLEM ... that until VERY RECENTLY has gone nearly un-changed and in fact has gotten WORSE because of those actions of SOME Officers to "Keep drugs on our streets" and "Pocketing cash for themselves" and that is true! It's a quick way for some of these very UN-ETHICAL OFFICERS ... to pocket \$1,000.00 -- \$2,000.00 -- or as much as \$5,000.00 in some cases!!

Now that THIN BLUE LINE ... is ONLY AS STRONG as OFFICERS THENSELVES are WILLING to ALLOW it to be. And the SHERIFF himself, when he is GIVEN that very INFORMATION ... should ACT ON IT -- and NOT YELL at PRIVATE CITIZENS -- who are JUST YELLING ----- "FIRE"!!! --- and him IGNORING IT!! THERE NEEDS TO BE SOMEONE WHO WILL INVESTIGATE CASES ... THAT ANY SHERIFF FEELS -- ARE "NON OF THE PUBLICS BUSINESS".

IT IS "OUR BUSINESS!"

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IT IS "OUR BUSINESS!"



# Driver

Continued from Page A1

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work around 7:30 a.m. taking with me one Poptart, a cup of milk and a Mountain Dew. I still was sick and congested so I took two Coricidan D (cold medicine) in the morning and two more in the afternoon. I worked all day in the office, breaking for lunch at approximately noon. I had lunch with Chrissy Lane (senior legal researcher - Nevada Attorney General's Office) at Rico's Pizza in Carson City, where I ate salad, pizza, garlic bread and drank a Coke. I returned to the law offices and worked until sometime after 5 p.m. (I was with George Allison and his clients at our office until shortly after 5 p.m.). I then went over to Solid Muldoon's (restaurant in Mo and Sluggo's) to pay for my chicken wings that I had ordered for our office potluck the next day since I had a hearing in Reno on Wednesday morning, Dec. 11, 1996. When I arrived at approximately 5:30 p.m., Jim Puzey (an attorney in our law office) was there having a drink. So I sat down with him while the waitress located the restaurant ticket. Mark Amodei (another attorney in our office) walked in and joined us. We ordered a drink. At approximately 7 p.m., Michelle and I left and I had not finished my second drink either (about half remained). I drove back to the office

and worked until approximately 8 p.m. When I was getting ready to leave my office, I got my keys out of my purse and noticed that I didn't have my checkbook. So I grabbed my purse and a file and drove back over to Mo and Sluggo's, parked in a parking lot on Curry St. (across from the door that has the "Solid Muldoon's" sign over it) and went inside to see if I left my checkbook. Mark Amodei was still at the same table when I arrived. He made a comment that my watered down drink was still sitting in the same place. I asked about my checkbooks, then immediately departed not having a drink. Mark Amodei left at the same time, walking me to my vehicle since his truck was parked close by on Curry St. I backed out of the lot and proceeded down Curry St. I cannot remember what intersection I got onto Carson Main St., either Robinson or Washington. I turned left at the intersection into the passing lane on Carson Main St. (395 North) and remained there.

I continued driving along 395 North headed home. The weather was very bad. I was by the area of Kentucky Fried Chicken/Taco Bell when I heard a noise of something striking my vehicle and I saw a flash of something out of the corner of my eye, then it disappeared. It happened so fast. I stopped right in the middle of the road, placed my vehicle in park and contemplated whether I should get

out of my vehicle. I may have started to open my car door, but it was cold, dark, windy and rainy and I did not have my coat, I did not get out of my car. Also, I was wearing a business suit with a shorter skirt and high heels. I was not sure what to do. I looked around from inside my vehicle and I did not see anything, no cars and there is nobody around. I was not sure what I had just struck or that maybe I was the subject of a prank. My air bag did not activate. I did not get jolted. Nothing flew around in my car. My car did not stall. At that point in time, I did not know that there was any damage to my vehicle. I then continued my drive home to Reno on 395 North. While still looking around to determine what just happened,

I drove up on the center median and had to swerve back on the road. Driving up towards the top of Lakeview Hill is the first time I noticed the damage to my vehicle. I noticed a concave in my bug shield and that my windshield had been pushed back a little. Sometime in Washoe Valley, I noticed my vehicle starting to overheat. I unsuccessfully attempted to call my husband (Louie Damonte Jr.) on my cellular phone sometime in Washoe Valley.

I finally reached him when I was at the top of Washoe Hill and told him that I was on my way home, but that my car was overheating. We got disconnected and he called me back at some point, or

I called him. I told him that I think I should stop and he could pick me up. I turned off at Steamboat Post Office and around the bend out of the ways of the cars. There were a couple calls and several attempts between my husband and I trying to find out where he was and my exact location. When he arrived he immediately pulled in front of my car and pulled a chain out of his truck (on the ranch there is a chain in every truck), then came over and asked me what I hit and I told him that I did not know. He wanted to tow the vehicle home to the shop on the ranch, so he commenced towing it up the hill, the weather was still very bad, so I never got out of my Jeep. The chain slipped off a couple of times, so Louie decided to pull it out of the way and leave it. I got into his truck and we drove home. He told me that he was going to have his father help him or at least get my client files and phone out of the car.

I later found out that while my husband was towing my car he heard on KOH a broadcast where they were looking for a white Jeep in connection with a hit and run accident involving a person (he couldn't remember exactly what he heard).

He never told me this information until the next day. He dropped me and our two children off at home, picked up his father (Louis Damonte Sr. who lives by us on the Ranch) and they drove over to



**Another photo** entered into evidence in District Attorney Noel Water's office. This shows another view of the impact to Audrey Damonte's vehicle after an alleged hit and run fatality.

where my car was and he told his father that I had hit something on my way home and what he heard on the radio. They decided they should not touch my car. My husband called Mark Amodei from his cellular phone in his truck and explained what he had heard and asked Mark if he would go to where I had hit something and see if he could find out if they were one in the same. Mark drove over to the location and saw four police cars, but no ambulance or anything. Mark called Louie back and relayed this information to him and recommended Louie call Bill

Maddox. Bill Maddox was then called who did not know anything about an accident, so at some point he called the sheriff's office who provided the information to him. I was put on the phone and Bill Maddox informed me that I had struck a person with my vehicle. Arrangements were made for someone to watch our children, then my husband, father in law and I reported to Bill Maddox' office, then immediately to the sheriff's office in Carson City.

(I was later told that information in the above paragraph in which I was not a participant.)

# The Busick Group

Government Appropriations Consultants

My name is Alecia Biddison. I am a managing partner and non-paid lobbyist with The Busick Group, a government relations company that has a specific interest in achieving judicial reform in Nevada.

Over the past several years, from one end of the state to the other, some of Nevada's judges have gained national notoriety. And while the media's attention on Nevada's judges may not reflect the many qualified, professional, and capable judges seated, it would appear the media and many Nevadans have lost faith in the judiciary. And whether this is simply a perception problem as many may suggest or a reality, change is needed and the time is right.

We believe a good beginning for reform can be achieved by changing how the people of Nevada qualify, seat, and retain their judges. We strongly support Senate Joint Resolution 2 and have committed to forming a Political Action Committee to raise the necessary funds to educate Nevadans on the importance of changing the state constitution to support a modified Missouri plan for Nevada.

Some thirty-five states are operating under a Missouri or modified version of the Missouri plan. While the plan is not without its own challenges, its benefits far outweigh the current system in Nevada.

Some of the benefits gained from enacting a modified Missouri plan for Nevada include:

- Insulates prospective and sitting judges from the burdens and pressures of costly and competitive open elections thereby changing the perception of the people;
- Emphasizes individual qualifications for selection instead of Political power or influence;
- Provides a screening process whereby applicants apply for judicial seats and the best qualified candidates are recommended for the selection to the bench;
- Promotes judicial stability through a review process;
- Allows for accountability and democratic participation of the people By requiring that judges stand for retention elections.

In a study published by the American Bar Association in July 2000, <sup>3</sup>The ABA has supported and continues to support a merit-based appointive system for judicial selection.<sup>2</sup>

59 Damonte Ranch Parkway, B159  
Reno, Nevada 89519  
775.315.0001

EXHIBIT H Senate Committee on Judiciary  
Date: 3-8-07 Page 1 of 2

Retired Chief Justice O'Connor says that electing judges is a fundamentally misguided idea. If there must be elections, she opines, the "Missouri Plan" is the better way to go.

Before becoming the Federal Director of Homeland Security, Governor Tom Ridge strongly supported the adoption of a merit selection system in Pennsylvania. Citing the unique nature of the judiciary that distinguishes judicial elections from executive and legislative elections.

Some may suggest that moving to a modified Missouri plan with a retention vote requiring judges to attain 60% of the yes vote's is too much. However, in Tennessee in 2006, all of the judges submitted for approval received an affirmative vote of at least 70 percent. 27 judges (three Supreme Court and 12 each on the Court of Appeals and Court of Criminal Appeals) Others may claim that minorities and women will be adversely impacted by a retention vote. However, in 1993, an American Judicature Society study found that the largest proportion of African Americans (32%) and women (35%) attained judicial office through a merit plan.

Retention elections are intended to eliminate the elements that characterize contested elections. The judge runs only against himself and is evaluated by the voters based on his record instead of his party affiliation, popularity, or campaign promises. The absence of an opponent reduces the pressure of having to raise large sums of money and directly reduces the perception issues associated with a costly campaign.

Moving to a modified Missouri Plan for Nevada is making a meaningful commitment to judicial reform and accountability by allowing for voter input, increasing public awareness of the operations of the judicial system, and preventing political cronyism from embedding itself in the administration of justice

In this time where money and politics create the perception that our judiciary can be bought and paid for through the open election process, approving SJR2 is an appropriate solution to addressing the competing interests of judicial independence and judicial accountability.

March 7, 2007

Hello,

My name is Garret Idle. I'm from Reno, and have been a resident of Nevada since I was 18 years old.

The reason I am here is to show my support for Senate Joint Resolution #2.

After hearing about how bad our Judicial system is after ~~being~~ reading about it in the L.A. Times newspaper, and a recent case in Reno, it started to get me thinking.

I then heard about the Modified Missouri plan. This plan is far better than our current system, and ensures that our society gets higher qualified candidates for the bench.

It also takes away the suspicion of campaign funds being used to influence court decisions in cases.

It also gives society relief if these candidates don't <sup>LIVE</sup> like up to their qualifications.

It just saddens me every time I hear that our great State has a "red-neck system of justice". This truly is a step in the right direction.

Thank you.

March 6, 2007

Senator Mark Amodei  
Chair - Senate Judiciary Committee  
Nevada Legislature  
401 S. Carson Street  
Carson City, Nevada 89701

**Via Facsimile To: (775) 684-6500**  
**Attn: Sandy**

Dear Senator Amodei:

I have received notice that the Senate Judiciary Committee will conduct a hearing on Senate ~~Joint Resolution No. 2~~ this Thursday, March 8, 2007 at 9:00 a.m. I am writing to you to request permission to address the Senate Judiciary Committee on this bill at that time.

During my term as President of the State Bar from June 2005 to June 2006, I was keenly interested in the issue of judicial selection. Accordingly, I conducted some research through the Administrative Office of the Courts of the Supreme Court of Nevada. I requested some statistical information from Ron Titus, the Director and State Court Administrator for the Administrative Office of the Courts. I analyzed that information and then wrote an article in the September 2005 edition of Nevada Lawyer. I have enclosed a copy of that article entitled, "Do We Really Elect Our Judges?" with this letter.

During my testimony before the Committee, I would like to address the statistical information analyzed in the enclosed article.

Thank you for your time and attention to this matter. I look forward to appearing before the Senate Judiciary Committee this Thursday.

Very truly yours,



VINCENT A. CONSUL

VAC/cew  
Enclosure

cc: Rew Goodenow, President State Bar Nevada  
(Via Facsimile To: (775) 348-7250)

EXHIBIT J Senate Committee on Judiciary

Date: 3-8-07 Page 1 of 2

# THINKING BOLDLY

## "DO WE REALLY ELECT OUR JUDGES?"

BY: VINCE CONSUL  
STATE BAR OF NEVADA PRESIDENT

### THE QUERY

In July I wrote a column which addressed the issue of contested judicial elections and the necessary campaign contributions which accompany those judicial elections and their effect upon judicial independence. I have received responses and comments from a couple of judges and a number of attorneys.

The responses from the judges I spoke with verified the concern about the effect of campaign contributions upon their judicial independence. However, those judges were also supportive of the idea of permitting the general public to elect its judges. This caused me to query as to what extent do we really "elect" our judges. I have often thought that approximately fifty percent (50%) of our district court judges and Supreme Court justices achieved their first judicial position via the appointment process. However, I had no hard facts or data. Relying upon my memory as to which judges had been appointed and which had been elected was simply too risky at the ripe old age of 52.

### THE NUMBERS

I contacted Ron Titus, the Director and State Court Administrator for the Administrative Office of the Courts of the Supreme Court of Nevada. The Administrative Office of the Courts (AOC) oversees not only the Supreme Court, but all the courts of our state. The AOC also collects and compiles information on the operation of the courts.

I asked Ron Titus if he could provide me with statistical information indicating how our current judges ascended to the bench, either by appointment or election. Mr. Titus told me that the AOC does collect such information and that he would be able to provide it to me for all sitting justices of the Supreme Court, and the judges of the District Courts, Justice Courts and Municipal Courts.

The information for this column is derived from the statistical data provided to me by Ron Titus of the AOC.

Armed with this statistical information, I was ready to try to answer the question, "How many of our judges were appointed or elected to their first judicial position?"

### "CRUNCHING THE NUMBERS"

The statistics from AOC indicate that there are currently 61 sitting district court judges statewide. Of those, 24 were appointed to the district court seat they presently occupy. This amounts to an appointment rate of approximately 40%. Two district court judges, who were elected to their district court seat, were first appointed to a lower court seat (i.e., municipal or justice) and then achieved election to the district court. Including these two judges in the overall appointment numbers means that 42.6% of our sitting district court judges achieved their first judicial position through the appointment process.

In examining the Nevada Supreme Court, the statistics revealed that all seven of our current sitting justices were district court judges before later being elected or appointed to the Supreme Court. Of the seven, six were elected to the Supreme Court. However, of those seven, five obtained their district court seats through the appointment process. Of those five, one, Chief Justice Nancy Becker, was elected to her very first judicial position with the Las Vegas Municipal Court in June of 1987. Accordingly, for the sake of this analysis, we will remove her from the "appointed" column, leaving four Supreme Court Justices who obtained their first judicial position through the appointment process. Thus, adding the seven justices

brings us to a total of 68 sitting judges or justices of whom 30 were appointed to their first judicial seat. This translates to a rate of 44% for Supreme Court justices or district court judges who achieved their first judicial position by means of the appointment process.

Some interesting differences were revealed when the statistics were reviewed for the two largest judicial districts, the Second (Washoe County) and Eighth (Clark). The Eighth Judicial District has 34 sitting district court judges. Twenty-one achieved their positions through the election process and 13 were appointed. This translates to an appointment rate of 38%. In the Second Judicial District, there are 12 sitting judges, of whom five were elected and seven were appointed. This translates to an appointment rate of 58%. While I am certainly no expert in the analysis of these figures, it would appear to me that this 20 point difference is statistically significant and may primarily be based upon the fact that the Eighth Judicial District has been experiencing explosive growth for the past 12 years. The Eighth Judicial District has added 18 departments since January 1, 1993, all of which were initially filled through the contested election process. This compares with Washoe County where the expansion of the district court has not been as explosive and contested elections for "new" district court seats have not been as numerous as in Clark County.

With regard to the justice courts, the AOC's statistics indicate that there are 62 justices of the Peace sitting statewide. Of those, 25 achieved their justice court judgeship position through the appointment process. This translates to an appointment rate of 40%. The AOC's statistics also show that there are 19 municipal court judges throughout the state. Of those, nine achieved their municipal court judgeships through the appointment process, which translates to an appointment rate of 47% at the municipal court level.

### WHAT DOES IT ALL MEAN?

Overall, the state of Nevada fills its judicial positions at the various judicial levels through the appointment process at a rate of 43% (64 of 149). In my mind, the question then becomes, "How different is our experience in Nevada from a "Missouri Plan" where judges are appointed and then face retention elections?" Under our present system, the power of the incumbent is strong, as there are very few successful challenges to sitting justices, judges or justices of the peace. What we have, in effect, is a form of the "Missouri Plan" where our judges are initially appointed and then face contested judicial elections in which the power of the incumbent is very strong and which result in very few removals of sitting judges or justices. In a true "Missouri Plan," the initial selection of a judge is through the appointment process and then retention elections (i.e., a yes or no to retain vote) in succeeding election cycles.

If we are approaching the model of a "Missouri Plan," which I would submit to you the statistics seem to indicate, then why not take the whole step, which would eliminate the need for campaign contributions and the perceived effect that these have on our judges' judicial independence. At the same time, the public would still have the "right to elect" its judges through the retention election process.

I raise the question to spark debate and to provide some statistical information for the discussion. I have no doubt that I will hear from many of you, both judge and lawyer alike. In fact, I encourage you to contact me or *Nevada Lawyer* magazine with your thoughts, observations and opinions.

A very grateful thank you to Ron Titus, the Director of the Administrative Office of the Courts, for providing the statistical information referenced in this article.

Supreme Court of Nevada  
ADMINISTRATIVE OFFICE OF THE COURTS

Supreme Court Building  
201 South Carson Street, Suite 250  
Carson City, Nevada 89701-4702



RONALD R. TITUS  
Director and  
State Court Administrator

July 14, 2005

Mr. Vincent Counsul  
Dickerson, Dickerson, Consul & Pocker  
Rainbow Corporate Center, Suite 350  
777 North Rainbow Boulevard  
Las Vegas, NV 89107

Dear Mr. Counsul:

During the recent legislative session, you requested information regarding sitting judges and whether they were appointed or elected to their positions. Now that session is over, we have had the opportunity to work on your request. The attached list was gathered from several sources and I believe answers your question.

Please let me know if you need additional information.

Sincerely,

Ron Titus

/rls  
Enclosure

Cc: Chief Justice Becker

Telephone (775) 684-1700 • Facsimile (775) 684-1723

**Current Judges Elected or Appointed to Office and Dates They took Office**

First Name Last Name		Entered Office	Judicial District or Court	Term Begin Date	Previous Judicial Offices
<b>Supreme Court</b>					
Nancy	Becker	Elected		01/04/99	Appointed to Eighth Judicial District Court July 1998 and elected to Las Vegas Municipal Court June 1987.
Michael	Douglas	Appointed		04/19/04	Appointed to Eighth Judicial District Court January 1996.
Mark	Gibbons	Elected		01/06/03	Elected to Eighth Judicial District Court January 1997.
James	Hardesty	Elected		01/03/05	Elected to Second Judicial District Court January 1999.
A. William	Maupin	Elected		01/06/97	Appointed to Eighth Judicial District Court June 1993.
Ronald	Parraguirre	Elected		01/03/05	Appointed to Eighth Judicial District Court September 1999.
Robert	Rose	Elected		01/02/89	Appointed to Eighth Judicial District Court November 1986.
<b>District Court</b>					
Valerie	Adair	Elected	Eighth	01/06/03	
Brent	Adams	Appointed	Second	07/04/89	
Stewart	Bell	Elected	Eighth	01/06/03	
Janet	Berry	Appointed	Second	01/17/96	Appointed to Reno Municipal Court February 1992.
Archie	Blake	Appointed	Third	01/04/88	
Joseph	Bonaventure	Elected	Eighth	01/07/91	Elected to Las Vegas Justice Court January 1983.
Peter	Breen	Appointed	Second	01/01/74	
Lisa	Brown	Elected	Eighth	01/02/01	
Michael	Cherry	Elected	Eighth	01/04/99	
Kenneth	Cory	Appointed	Eighth	02/02/04	
John	Davis	Elected	Fifth	01/07/91	Elected to Smith Valley Justice Court January 1983.
Nicholas	Del Vecchio	Elected	Eighth	01/02/01	
Mark	Denton	Appointed	Eighth	09/04/98	
Steven	Dobrescu	Appointed	Seventh	04/20/01	
Frances	Doherty	Elected	Second	01/06/03	
Allan	Earl	Appointed	Eighth	12/05/00	
Jennifer	Elliott	Elected	Eighth	01/06/03	
Steve	Elliott	Elected	Second	01/06/97	
Robert	Estes	Elected	Third	01/02/01	
David	Gamble	Elected	Ninth	01/05/87	
Lee	Gates	Appointed	Eighth	09/09/91	
Michael	Gibbons	Elected	Ninth	01/02/95	
Jackie	Glass	Elected	Eighth	01/06/03	
Elizabeth	Gonzalez	Appointed	Eighth	07/26/04	
Michael	Griffin	Elected	First	01/01/79	
Gerald	Hardcastle	Elected	Eighth	01/04/93	
Kathy	Hardcastle	Elected	Eighth	01/06/97	
David	Hardy	Appointed	Second	03/07/05	
Douglas	Herndon	Appointed	Eighth	02/14/05	
David	Huff	Elected	Third	01/06/97	

**Current Judges Elected or Appointed to Office and Dates They took Office**

**Court**

First Name	Last Name	Entered Office	Judicial District or Court	Term Begin Date	Previous Judicial Offices
Stephen	Huffaker	Appointed	Eighth	02/22/80	
John	Iroz	Elected	Sixth	01/06/03	
Steven	Jones	Elected	Eighth	01/04/93	
Steven	Kosach	Elected	Second	01/07/91	
Robert	Lane	Elected	Fifth	01/02/01	
Michelle	Leavitt	Appointed	Eighth	05/13/02	Appointed to Las Vegas Municipal Court January 1999.
Sally	Loehrer	Appointed	Eighth	01/18/93	
William	Maddox	Appointed	First	08/21/00	
John	McGroarty	Elected	Eighth	01/03/83	Elected to Las Vegas Justice Court January 1979.
Mike	Memo	Elected	Fourth	01/06/97	
Stefany	Miley	Elected	Eighth	01/03/05	
Donald	Mosley	Elected	Eighth	01/03/83	
Cheryl	Moss	Elected	Eighth	01/02/01	
Dan	Papez	Elected	Seventh	01/07/93	
Robert	Perry	Appointed	Second	02/01/05	
Jerome	Polaha	Appointed	Second	03/05/99	
Sandra	Pomrenze	Elected	Eighth	01/03/05	
Andrew	Pucinelli	Appointed	Fourth	10/01/02	
T. Arthur	Ritchie, Jr.	Appointed	Eighth	03/05/99	
Nancy	Saitta	Elected	Eighth	01/04/99	Appointed to Las Vegas Municipal Court October 1996.
Gloria	Sanchez	Elected	Eighth	01/04/93	
Deborah	Schumacher	Appointed	Second	04/28/97	
Cynthia	Steel	Elected	Eighth	01/06/97	
Connie	Steinheimer	Elected	Second	01/04/93	
Jennifer	Togliatti	Appointed	Eighth	05/21/02	Elected to Las Vegas Justice Court January 1999.
Valorie	Vega	Appointed	Eighth	03/05/99	Appointed to Las Vegas Municipal Court August 1989.
William	Voy	Appointed	Eighth	05/08/98	
Richard	Wagner	Elected	Sixth	01/07/91	
David	Wall	Elected	Eighth	01/06/03	
Jessie	Walsh	Elected	Eighth	01/06/03	Appointed to Las Vegas Municipal Court October 1999.
Chuck	Weller	Elected	Second	01/03/05	

*W*

**Current Judges Elected or Appointed to Office and Dates They took Office**

		Court			
First Name	Last Name	Entered Office	Judicial District or Court	Term Begin Date	Previous Judicial Offices
<b>Justice Court</b>					
Anthony	Abbatangelo	Elected	Las Vegas	09/23/96	Elected to Las Vegas Municipal Court June 1993.
Harold	Albright	Elected	Reno	01/04/99	
Jim	Andersen	Elected	Austin	01/02/95	
Robert	Bennett	Elected	Canal (Fernley)	03/06/01	
Karen	Bennett-Haron	Appointed	Las Vegas	06/17/02	
James	Bixler	Elected	Las Vegas	01/02/81	
Phyllis	Black	Elected	Jackpot	01/07/91	
Joe	Bonaventure	Elected	Las Vegas	01/03/05	
Christina	Brisebill	Elected	Pahrump	01/01/01	
Max	Bunch	Appointed	Argenta (Battle Mtn)	06/15/92	
Rodney	Burr	Appointed	Henderson	12/03/90	
Patricia	Calton	Elected	Wells	01/01/01	Appointed ex-officio Wells Municipal Court Judge January 2001.
Elizabeth	Chabot	Elected	Paradise Valley	01/01/68	
Juanita	Colvin	Elected	Esmeralda (Goldfield)	08/09/91	
Stephen	Dahl	Elected	North Las Vegas	01/02/95	
Annette	Daniels	Appointed	Virginia City	12/20/88	
Ed	Dannan	Elected	Reno	01/04/93	
Susan	Deriso	Elected	Sparks	01/01/01	
Ron	Dodd	Appointed	Mesquite	11/17/98	Appointed Mesquite Municipal Court Judge July 1985.
James	EnEarl	Elected	East Fork (Minden)	01/02/95	
Barbara	Finley	Elected	Reno	01/04/99	
Susan	Fye	Elected	Beowawe	01/01/01	
Stephen	George	Elected	Henderson	01/01/01	
Sarah	Getker	Appointed	Meadow Valley	02/05/82	
Richard	Glasson	Elected	Tahoe	01/01/01	
Terry	Graham	Appointed	Wadsworth	09/12/00	
Laura	Grant	Appointed	East Line (Wendover)	02/01/03	
Dawn	Haviland	Appointed	Goodsprings	08/03/99	
Kevin	Higgins	Appointed	Sparks	05/06/03	
Nola	Holton	Elected	Pahrnagat Valley	01/05/87	Appointed ex-officio Caliente Municipal Court Judge June 1992.
Howard	Huttman	Elected	McDermitt	01/02/95	
William	Jansen	Appointed	Las Vegas	09/16/85	
Ruth	Kolhoss	Appointed	Moapa	03/05/02	
Cecil	Leavitt	Appointed	Bunkerville	01/02/72	
Mary	Leddy	Elected	Elko	01/07/91	Appointed ex-officio Elko Municipal Court Judge January 1991.
Deborah	Lippis	Elected	Las Vegas	11/30/92	
James	Mancuso	Appointed	Incline Village	11/26/80	
Joe	Maslach	Appointed	Tonopah	01/02/95	
Victor	Miller	Appointed	Boulder City	01/04/94	Appointed ex-officio Boulder City Municipal Court Judge June 1986.
Dennis	Milligan	Elected	Mason Valley	01/02/95	

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**Current Judges Elected or Appointed to Office and Dates They took Office**

		Court			
First Name	Last Name	Entered Office	Judicial District or Court	Term Begin Date	Previous Judicial Offices
Billy	Moma	Elected	Laughlin	01/02/89	
Carol	Nelsen	Elected	Lovelock	01/02/95	
Barbara	Nethery	Appointed	Carlin	05/06/91	Appointed ex-officio Carlin Municipal Court Judge May 1991.
Ronald	Niman	Appointed	Ely	07/01/84	Appointed Ely Municipal Court Judge June 2002.
Nancy	Oesterle	Appointed	Las Vegas	03/25/91	
Russel	Peacock	Appointed	Lund	01/01/95	
William	Rogers	Elected	Dayton	01/01/01	
Fidel	Salcedo	Elected	Reno	01/07/85	
Jack	Schroeder	Elected	Reno	01/04/99	
John	Schweble	Elected	Eureka	01/01/01	
Douglas	Smith	Elected	Las Vegas	01/02/95	
John	Tatro	Appointed	Carson City	01/23/95	
Valeria	Taylor	Appointed	Baker	09/25/85	
Victor	Trujillo	Elected	Hawthorne	01/02/89	
Wendell	Turner	Elected	Searchlight	01/02/95	
Natalie	Tyrrell	Elected	North Las Vegas	01/02/01	
Frances	Vidal	Appointed	Smith Valley	02/04/88	Appointed Yerington Municipal Court Judge June 1990.
D. Lanny	Waite	Elected	Moapa Valley	01/05/87	
Gene	Wambolt	Appointed	Union (Winnemucca)	10/01/99	
Daniel	Ward	Elected	Fallon	01/07/91	
Robey	Willis	Appointed	Carson City	07/01/84	
Ann	Zimmerman	Elected	Las Vegas	01/02/01	
<b>Municipal Court</b>					
George	Assad	Appointed	Las Vegas	06/19/02	
Dan	Bauer	Appointed	Ferley	09/13/02	
Bert	Brown	Elected	Las Vegas	06/28/99	
Jay	Dilworth	Elected	Reno	06/29/87	
Toy	Gregory	Appointed	Las Vegas	01/01/83	
Diana	Hampton	Elected	Henderson	06/21/05	
Douglas	Hedger	Elected	Henderson	05/07/03	
Paul	Hickman	Appointed	Reno	02/05/91	
Sean	Hoeffgen	Elected	North Las Vegas	07/01/05	
Kenneth	Howard	Appointed	Reno	12/01/98	
Cedric	Kerns	Elected	Las Vegas	06/23/97	
Elizabeth	Kolkoski	Appointed	Las Vegas	07/05/00	
Mike	Lister	Appointed	Fallon	04/11/05	
Barbara	McCarthy	Elected	Sparks	06/11/01	
Ken	Proctor	Appointed	Henderson	04/02/93	
Larry	Sage	Elected	Sparks	06/12/95	
Abbi	Silver	Elected	Las Vegas	06/18/03	
Warren	Van Landschoot	Elected	North Las Vegas	07/01/97	
James	Van Winkle	Appointed	Reno	02/01/96	

## **State Bar Supports Senate Joint Resolution No. 2**

The State Bar of Nevada supports the enactment of SJR 2. Nevada's lawyers, those in the best position to evaluate the day-to-day operations of our courts, strongly believe it is time to change our system. SJR 2 provides for merit selection of judges and for the people to vote to remove judges who are not doing their jobs.

1. On March 7, 2007, the Board of Governors of the State Bar of Nevada voted overwhelmingly to change the system and advocate support for SJR 2.
2. Recent federal court decisions provide new reasons to change our system. Due to the United States Supreme Court's 2002 *Republican Party of Minnesota v. White* decision, candidates for judicial office will be able to state how they would decide cases, while accepting campaign contributions from businesses, like insurance companies, lawyers and special interests. Nevada is the only state in which elected judges are permitted to directly solicit campaign contributions. Judicial ethics rules and decisions in Nevada provide that no conflict exists when a judge decides a case involving a party that has given them a campaign contribution or who is represented by a lawyer who has given them a campaign contribution.
3. Judicial ethics rules exempt campaign contributions from their otherwise strict approach of requiring judges to disqualify themselves when their impartiality might reasonably be questioned.
4. The popular election does not provide an adequate method for voters to assess the qualifications, or judicial temperament, of judges. Because cases are decided on disputed facts that are not presented to the voters, and the voters, as a practical matter, are unable to watch proceedings, voters lack adequate information. SJR 2 provides for a judicial review commission that will report to the voters whether judges are doing their job.
5. Judicial campaigns require that candidates devote an increasing amount of time and resources to fundraising and campaigning and a decreasing amount of time to the increasing workload, particularly in Clark County, of Nevada's courts, which are already some of the busiest in the nation.
6. In the last election, new judicial campaign fundraising records were set in four states. In at least eight state supreme court campaigns, fundraising soared past one million dollars. The collective cost was more than thirty million dollars for the supreme court campaigns alone.
7. Judicial campaigns are becoming more expensive, costing businesses, citizens and interest groups hundreds of thousands (district court) to millions (supreme court) of dollars.
8. Ethics rules prohibit judges from advocating that the system should be changed.
9. SJR 2 will provide the following benefits: (a) reduced cost to all participants and the public of the election system; (b) elimination of the influence of money on the resolution of individual disputes in Nevada's courts; (c) reduction in negative campaigns and negative publicity about Nevada's justice system; and (d) judges will have more time to devote to resolving disputes and deciding cases.

For further information and research, contact:

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**Progressive Leadership Alliance of Nevada**

## The Supreme Jackpot II

### A Study of Campaign Contributions to Nevada Supreme Court Candidates 2004

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EXHIBIT M Senate Committee on Judiciary  
Date: 3-8-07 Page 1 of 6

## Commentary

### A 'money-driven circus'

#### Judicial elections in Nevada

by Jim Hulse, Past Chair and Vice Chair of Common Cause/Nevada

It is fortunate that this report by PLAN went to press during the same month when the U.S. Senate Judiciary Committee held hearings on the confirmation of Judge John Roberts to become Chief Justice of the United States. Common Cause/ Nevada is pleased to have contributed to the publication of this report.

Much attention has been focused on questions of whether Judge Roberts has the temperament and attitudes to serve as leader of the highest court in the land. These are appropriate questions. Fortunately, there seemed to be no concern about whether Judge Roberts had accepted money in advance from special interest groups that will have cases before the Court.

In Nevada, we are not so fortunate. We still elect our Supreme Court justices and district judges by the so-called popular vote. This means that every six years a sitting judge (or an ambitious attorney with a special axe to grind) can put his or her name on the ballot, seeking a seat on the bench. If he or she has enough money (or can raise it), victory is likely.

Usually the outcome in Nevada depends on the amount of money a candidate spends to get her or his message out in the media. Under the present system, both incumbent judges and those who want to replace them are subjected to months of fund-raising and glad-handing to prepare for the elections.

This happens even when candidates have no opposition. In many cases incumbent justices run unopposed. They seek campaign contributions on the possibility that they might have challengers, and most of this money comes from contributors who have or have had litigation before the high court.

As this fine study by PLAN shows, the amount of money pumped into the campaigns for Justices of the Nevada Supreme Court has escalated in recent years. Justices typically receive substantial campaign contributions from special interest groups who often have legal cases pending in the court. This happens even when incumbent justices are unopposed!

Dedicated justices and responsible lawyers do not like this money-driven circus. Most judges do not favor the system that forces them to raise money to hold office.

Justices of the Nevada Supreme Court have taken the lead in trying to modify this obvious flaw, only to hit roadblocks in the Nevada Legislature. During both the 2003 and 2005 sessions, lawmakers turned a deaf ear on a request from the justices to make modest changes that would have greatly improved this situation. The measure offered by the Justices would have changed the filing dates so they would know early-on whether or not they were running

## Executive Summary

Perhaps the only thing rising faster than the price of gasoline is the cost of winning a Nevada Supreme Court seat. The nine candidates for Nevada's three Supreme Court seats raised more than \$3 million for their 2004 campaigns. The average amount raised to win a State Supreme Court seat set a new record high—\$543,801.15, increasing by nearly \$230,000 over the 2002 amount.

These increased costs are paid by special interest groups. In our previous study we found that eight out of the top ten contributors later appeared in court before the justices they gave campaign contributions to. At the very least, this gives the appearance of a conflict of interest.

### Money Can't Buy Votes, or Can It?

Two out of three winning candidates raised more money than their opponents. Michael Douglas and James Hardesty raised more than five times as much money as their general election opponents.

Ron Parraguirre raised about one-third *less* than his opponent, John Mason; however, Parraguirre did raise more than enough money to run a competitive race. He raised the third highest amount of campaign contributions in our State Supreme Court database, which goes back to 1998.

### Lawyers & Gaming Bankrolled Winners

The three winning candidates—Douglas, Hardesty and Parraguirre—were strongly supported by Lawyers & Lobbyists and the Gaming industry—two of the largest contributors by industry (see Key Findings for exact figures). Hardesty and Parraguirre also received major support from most of the other industries or groups. Douglas' support was not quite as broad.

The top five contributors by groups or industry—Lawyers & Lobbyists, Candidates Self-Financing, Gaming, Finance/Insurance/Real Estate and Business—represent 73.6 percent of all contributions. Most of these groups were the top contributors in our previous study with the exception of the Candidates Self-Financing group. No candidates in the earlier report self-financed their campaigns.

Lawyers & Lobbyists as a group were the largest contributors to candidates, but the largest individual donations were made by Gaming companies (with the exception of Univision, which gave only to one candidate—Mason).

### Gaming's Love—Hate Relationships

The Gaming industry loved Parraguirre, giving him nearly 42 percent of their contributions. Gaming showed no love towards two unsuccessful candidates—Joel Hansen and Cynthia Dianne Steel. They did not receive a single dime in recorded contributions from the Gaming industry. (Note: Lori Lipman Brown, who lost in the primary, also reported no contributions from Gaming; however, she accepted only small contributions of \$100 or less and did not receive recorded contributions from any group or industry.)

## **Progressive Leadership Alliance of Nevada—PLAN**

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The top Gaming industry donor was Mandalay Bay Group, giving candidates nearly \$80,000. Other key Gaming players include MGM Mirage, Boyd Gaming Corp., Stations Casinos, Coast Hotels & Casinos, IGT and Harrah's. These are the same Gaming companies that gave the most in our previous study of contributions to State Supreme Court Candidates.

Other top individual donors included Lionel Sawyer & Collins, Attorney Laura Fitzsimmons and the Nevada Subcontractors Association. The Subcontractors were not among the top donors in our previous study. They gave two-thirds of their money (\$20,000) to one candidate—Mason.

### **Non-partisan Races?**

Party contributions did play a role in these so-called non-partisan court races with Republican politicians or groups giving candidates \$17,211 (68.1% of all contributions in this category) and Democrats giving \$6,100 (24.1%). The balance came from non-partisan sources. The top recipient of Party contributions was Parraguirre with 29.3% of the total. Parraguirre was favored by Republicans.

### **Most Candidates who Self-Finance End-up Losers**

As for candidates self-funding their campaigns, Mason came in first at more than \$400,000 (48.5% of his total contributions). Steel, Ashworth, Hansen and Parraguirre all gave their own campaigns thousands of dollars. It seems as though the more a candidate self-finances his or her campaign, the less chance he or she has of winning. Perhaps self-financing shows a lack of broad support.

### **No Limits Will Hold 'em**

Nevada law limits campaign contributions to \$10,000 from any one individual to a single candidate (\$5,000 in the primary and \$5,000 in the general election). However, the law is full of loopholes and is routinely skirted.

Companies and individuals who gave a single candidate more than the \$10,000 limit include Univision, which gave Mason \$60,000 (through various subsidiaries and executives). Others that skirted the contribution cap are Mandalay Bay Group, MGM Mirage, Stations Casinos, Lionel Sawyer & Collins, Echeverria Law Office, Chartwell Partners, Nevada Subcontractors Association, John and Stephanie Perechio, and Treppid.

These donors did not break the letter of the law, but they certainly broke the spirit of the law. The current law allows a single corporation or individual to wield too much influence over State Supreme Court candidates. The loopholes must be closed. But in the scheme of things, skirting the contribution cap is a relatively minor problem. The major problem is special-interest-financed elections give the appearance or the perception of corruption.

Historian and Common Cause/Nevada member Jim Hulse pulled no punches when he said: "The public perception is that not only can the presidency of the United States be bought, and not only can the legislators be purchased by those who fund their campaigns, but even seats on the Nevada Supreme Court are for sale."

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## Are Reforms Needed?

The current system of special interest-financed judicial elections is bad for judges—they lose their appearance of impartiality—and it is bad for lawyers and others who feel pressured to contribute to a judge's campaign.

If lawyers do not contribute, they fear they will receive an unfair hearing from that judge, especially if the opposing attorney did give contributions to the judge's campaign.

The state Judicial Discipline Commission recently found that former District Judge Jeffrey Sobel tried “to pressure lawyers to give him campaign contributions in his 2002 re-election campaign.” The Commission publicly censured Sobel and barred him from being a judge in the future (“Sobel barred from holding judge post,” *Las Vegas Sun*, 6/30/05).

In another case, it has been alleged that “Family Court Judge Cheryl Moss maintains a list of lawyers who have donated to her campaigns and gives them favorable treatment in her courtroom.” Moss denies the allegations (“Judge accused of favoritism,” *Las Vegas Review-Journal*, 6/29/05).

In a June 30, 2005 editorial, the *Las Vegas Review-Journal* stated, “Do Nevada judges show a preference to attorneys who have contributed to their election campaigns? Let's not be naïve.”

While most attorneys seem to be looking at this problem with eyes wide shut, a few are confronting it head-on. “It is generally recognized among attorneys that a refusal to contribute money (to a judge's election campaign) may jeopardize the interests of future clients who will appear in that court room,” wrote Las Vegas Attorney Albert G. Marquis in a July 11, 2005 letter to the *Las Vegas Review-Journal*. He added, “If you wanted to establish a system designed to encourage corruption this would be it.”

Marquis suggested two possible alternatives to electing judges. He said judges can be appointed by the governor or they could be elected by their peers (attorneys).

The president of the Nevada State Bar has weighed-in on the issue. “I think the Nevada procedure for the contested election of judges subjects our judiciary to intimidation and threats of retribution and thereby impacts their judicial independence,” wrote State Bar of Nevada President Vince Consul in the July 2005 issue of *Nevada Lawyer*. He noted that Michael Galardi, a former strip club owner, bragged about influencing judges through campaign contributions.

Consul suggests that Nevada “change from a system which provides for the contested election of judges to a ‘Missouri Plan’ which involves an appointment process and retention elections.”

In the past, a modified Missouri Plan was recommended as a way to select judges in Nevada but that proposal was scuttled. However, it may be an idea whose time has come.

Something needs to be done. We've gone past "the appearance of corruption." The public, attorneys and judges themselves are disillusioned with the current way we select or elect judges.

PLAN and Common Cause/Nevada have recommended publicly financed election for judges (see our previous report). Publicly financed elections would eliminate the conflict of interest the current system allows. However, there are pluses and minuses to all systems used to select or elect judges. That is why PLAN and Common Cause/Nevada recommend that a panel of concerned citizens review all options on electing or selecting judges.

The panel would include all stakeholders: citizens, business owners, attorneys, law professors, former judges and others. The panel would present its findings to the 2007 Nevada Legislature or take their suggestions directly to the people in the form of an initiative petition. One thing is clear: It is past time to reform judicial elections.

Thursday, March 08, 2007

Good morning Chairman Amodei and committee members.

I am Sheila Ward, a citizen lobbyist, a concerned citizen, mother of five children and 8 grandchildren, 9<sup>th</sup> on the way.

I am asking you to vote NO on SJR2 in order to keep the right of citizens to elect their justices.

The courts unfortunately have become the major societal agency for reform. They are the reconstructionists in our cultural war.

Judging and legislating (Article 1, Sec 1 grants Congress the legislative powers, Sec 2 the houses of representatives for the states) should be fundamentally separate government entities as stipulated in our U.S. Constitution.

This is no so in America today.

The judges have been 'legislating' since 1947, in *Everson v. Board of Educ.*, reversing 150 years of established legal practice under the Constitution;

*state legislatures had been passing laws since the 1600s allowing the free exercise of religious practices*

*in schools and public affairs: voluntary prayer, Bible reading, the use of the Ten Commandments.*

*These laws had been enacted with the consent of the governed and through representatives elected of the people, by the people, and for the people. (The Myth of Separation by David Barton, pp41-43).*

These original reconstructionist justices laid the groundwork for legislating and deconstructing our unique U.S. Constitution and creating great damage to our culture.

They purposefully misinterpreted a letter Pres. Thomas Jefferson wrote in 1802 to the Danbury Baptist Assoc., Connecticut, to lay aside fears started by a rumor that a particular denomination was soon to be recognized as the national denomination.

Pres. Jefferson was not a Baptist but used the phrase written by the correspondent, Baptist minister Roger Williams. Rev. Williams wanted to be sure there was a “wall of separation”, a one-directional wall protecting the church from the government.

The voters actually need to be able to ask **more questions** of our judicial candidates during the election process.

We need to know where judges-turned-legislators stand on critical issues before they are placed on the bench.

Thank you,

Sheila Ward  
2 Glenbrook Circle  
Carson City, NV 89703  
775-883-1362  
[wardshey@sbcglobal.net](mailto:wardshey@sbcglobal.net)

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session  
April 5, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:11 a.m. on Thursday, April 5, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Mark E. Amodei, Chair  
Senator Maurice E. Washington, Vice Chair  
Senator Mike McGinness  
Senator Dennis Nolan  
Senator Valerie Wiener  
Senator Terry Care  
Senator Steven A. Horsford

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Brad Wilkinson, Chief Deputy Legislative Counsel  
Gale Maynard, Committee Secretary

**OTHERS PRESENT:**

The Honorable A. William Maupin, Chief Justice, Nevada Supreme Court  
Juli Star-Alexander, Redress, Incorporated  
James Richardson, Ph.D., Nevada Faculty Alliance  
Alecia D. Biddison, The Busick Group  
Rew R. Goodenow, State Bar of Nevada  
John K. O'Connor  
Robert C. Kim, Chair, Executive Committee, Business Law Section, State Bar of Nevada  
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State

This resolution was initiated twice before. We did not know how successful the court expansion program would become. It would have been hard to make the case to the public at that time, but now we are ready.

SENATOR CARE:

I see the need, but how are you going to make the case to the public? How are you going to promote the idea?

CHIEF JUSTICE MAUPIN:

We will not have competition on an attempt to get a bond measure passed to build a 17-story courthouse in Clark County along with a renovated jail. The efforts of The Honorable James W. Hardesty and The Honorable Michael L. Douglas created a Bench-Bar Committee which started a regular interaction with members of the State Bar of Nevada to keep them abreast of the progress the Nevada Supreme Court makes with its dockets and our needs.

The Nevada Supreme Court cannot solicit or raise funds. The legal profession as an institution will have to step forward to raise funds. A political committee will have to be formed in order to promote this and be professional as well as accountable with spending. We have to make our case to the people and have a business plan. We are in the process of doing this. Justice Hardesty said he was in favor of an intermediate appeals court only if justification could be based on court caseloads, management needs and the development of an efficient court.

It was agreed to lease space in the Regional Justice Center for office and courtroom space pending the approval of an intermediate appeals court.

In intervening years, court expansion seemed to be working. Our infrastructure issues are to add new offices. The three chambers available now are suitable for an intermediate appeals judge, law clerk and judicial assistant.

CHAIR AMODEI:

Is there anyone else to speak on S.J.R. 9? We will close the hearing on S.J.R. 9 and reopen the hearing on S.J.R. 2.

**SENATE JOINT RESOLUTION 2:** Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)

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JULI STAR-ALEXANDER (Redress, Incorporated):

In regard to this joint resolution, we were asked to provide evidence and support for our testimony which was missing from public record; therefore, we have prepared an overview (Exhibit D, original is on file in the Research Library) which will be released to all public venues.

Senate Joint Resolution 2 goes in the opposite direction of judicial accountability. Fifteen other states use judicial selection committees. The Nevada plan, derived from the Missouri Plan, will fail. Evidence supports that the Missouri Plan does not work. Using the judicial selection committees does nothing to repair the judiciary.

The Nevada plan would require us to surrender the right to elect and recall judges, currently a right under the *Constitution of the State of Nevada*.

Articles being published speak to cronyism in Nevada. Any branch in the government can be corrupted. We are concerned that with a judicial selection committee, those seeking a judicial appointment could bribe members of the committee. This resolution is a Band-Aid to cover a diseased legal system.

I have been a critic of the judiciary and justice system in Nevada and page 12 of Exhibit D has a quote by U.S. Supreme Court Chief Justice Warren E. Burger. Our report cites multiple areas that should be reviewed prior to any discussion of S.J.R. 2.

Other options of judicial selection have not had attention, and that is the sortition of judges. This would eliminate the need for appointment and selection of judges. This method is successful in jury trial situations where the jury is sortitioned. The backlog of cases could be ratified through the use of a sortition system.

Unless the Nevada Supreme Court creates a user-friendly public Website which tracks judicial overturns, recusals and disqualifications along with an open judicial complaint system, we need financial disclosure reports online, so voters can make a sound and reasonable decision on elections. Things can be done that will create the kind of accountability S.J.R. 2 was designed to correct.

The entire system is defective, not by choice, but by parties involved not abiding by the *Constitution of the State of Nevada*. An incredible amount of

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incompetence is in the legal system. A lot of work has to come from this Committee. We are not happy with testimony from Senator William J. Raggio because he did not give a fair representation of the jail for the judges' initiative. We are not an advocate of that organization, but it stands for judicial accountability initiative law. Grand juries are necessary to review acts of judicial misconduct.

Why can we sentence people to death but do not have the power to decide if a judge has engaged in misconduct? Senate Joint Resolution 2 is misleading.

JAMES RICHARDSON, PH.D. (Nevada Faculty Alliance):

During the day, I direct the Grant Sawyer Center for Justice Studies at the University of Nevada, Reno. Research is done relevant to this question and to develop new standards for the American Bar Association (ABA) for judicial performance. There are good methods that take into account the views of citizens and the legal profession. Many trial judges who have attended the degree program I direct at the Sawyer Center have questions on raising money for campaigns. Time after time, judges who have a process, as suggested in S.J.R. 2, are envied by other judges. Those who do not have the process suggested by S.J.R. 2 are faced with problems raising campaign funds.

The ABA and the judiciary have taken important steps rectifying some of these problems. This resolution is a compromise involving citizen input to assess the performance of judges and recommend appointments. Based on conversations with judges throughout the country, I urge support for S.J.R. 2.

ALECIA D. BIDDISON (The Busick Group):

I helped to draft this bill with Senator Raggio. I support S.J.R. 2.

REW R. GOODENOW (State Bar of Nevada):

I am also an active member of the ABA; both associations I am affiliated with have adopted positions of support and favor of the merit selection process. There are studies on this process, and I can provide the Committee with this information.

Senator Care, with respect to S.J.R. 9, convincing the electorate who makes the decision on what is in the best interest for Nevada, the ABA Website has enlightening materials.

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A 2004 case decided by the United States Supreme Court, *Republican Party of Minn. v. White*, 536 U.S. 765 (2002), changed the field of judicial selection. It changed in a way important to the Committee and legislative decision where it upheld a judicial officer's right to free speech.

Because judges in Nevada can directly solicit campaign contributions, it creates a situation of what a judge might do in a particular case. This situation raises questions about our judicial system, and a change is necessary.

Ms. Star-Alexander spoke of an article in the *Las Vegas Review-Journal* that focused on counsel for those children in the foster care system. The Chief Justice and I took on the challenge to provide attorneys for that system along with volunteers. We are addressing these needs.

JOHN K. O'CONNOR:

This bill is a start in the right direction, but amendments need to be in place where an attorney can run against incumbents. It will bring a balance so more attorneys will run for office.

CHAIR AMODEI:

We will close the hearing on S.J.R. 2 and open the hearing on S.B. 483.

**SENATE BILL 483**: Makes various changes to provisions relating to business.  
(BDR 7-868)

ROBERT C. KIM (Chair, Executive Committee, Business Law Section, State Bar of Nevada):

This bill embodies the Executive Committee's proposed revisions to our State's business law statutes. I provided the Committee with a memorandum (Exhibit E) that walks through each section of S.B. 483 and why we are proposing amendments to certain sections of the bill.

Section 1 allows a corporation to enter its own articles or bylaws. It provides for the waiver of the corporate opportunity doctrine. This doctrine holds the directors and officers to good faith and loyalty to their respective corporation by providing any business opportunity back to the corporation before pursuing it for themselves.

## DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or [library@lcb.state.nv.us](mailto:library@lcb.state.nv.us).

## REDRESS, INC.

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March 8, 2007, Unable to present;  
Modified for 4-5-07 Work Session

FOR PUBLIC RECORD

### SENATE JUDICIARY COMMITTEE

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Senator Washington	<a href="mailto:mwashington@sen.state.nv.us">mwashington@sen.state.nv.us</a>
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Senator Weiner	<a href="mailto:vweiner@sen.state.nv.us">vweiner@sen.state.nv.us</a>

**RE: Senate Joint Resolution2 (SJR-2) Judicial Selection**

On-line at <http://www.leg.state.nv.us/74th/Reports/history.cfm?ID=235>; "Proposes to amend the Nevada Constitution to revise provisions regarding to the selection of justices and judges (BDR C-177)"

### OVERVIEW

This material is being released to the media and nationwide to legal reform advocates for their use. A radio show with this topic was taped on 3-16-07; a copy of the show is on-line at <http://brenthowardnv.blogspot.com/> for future use (along with legal reform activists' television, radio and legislative appearances).

Redress, Inc. opposes SJR-2, as does the Nevada Families Eagle Forum (Exhibit 1c).

- The bill goes in the opposite direction of judicial accountability, which is what is called for with regard to media attention to our broken judiciary and the resultant lack of public perception of integrity within that branch of government.
- The Nevada Plan, morphed from the Missouri Plan, will fail. The Missouri plan doesn't work; judicial selection committees in the fifteen other states currently does nothing to repair the judiciary. See relevant Exhibits.
- Citizens have to surrender a current right under the Constitution, the right to elect and recall judges. As we say in legal reform, "be careful to whom you surrender your rights, because you probably won't get them back again".
- SJR-2 represents a band-aid fix to cover up cancer. It changes the appearances of things but does not repair the rampant underlying disease.

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WORKING TOGETHER TO ATTAIN FAIRNESS

EXHIBIT D Senate Committee on Judiciary

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The Las Vegas Sun article of 6-13-06, "Selection of judges might change" (Exhibit 1) is a reaction to the valid attack on the judiciary by the media, along with the judiciary's poor response (Exhibit 1a1). However, changing judicial selection is not the answer, and actually goes in the opposite direction of accountability potentially increasing our judicial problems. On-line Reno Gazette-Journal article of 3-11-07, "Plan for judges faces uphill battle" (Exhibit 1b) alleges SJR-2 to be "a reasonable, though not perfect, compromise"; however, the further contents of this report indicate otherwise. It's best that opinions not based on actual research and facts be set aside.

There are now five legal reform groups in Nevada: Redress, Inc., Nevadans for Equal Parenting, P.A.S.S.A.G.E., Coalition for Family Court Reform, and Nevada Eagle Forum (focusing on other issues as well). Two of those groups have functioning support groups, Redress, Inc. (Exhibit 1d) and P.A.S.S.A.G.E. (Exhibit 1e). Legal reform is growing at an amazing pace, and information with regard to the lack of integrity and competence of our judiciary are becoming apparent to more and more citizens. Our courts are destroying our social fabric.

The recent establishment of a Blue Ribbon Panel (Article 6 Commission) may have already gone awry, as it is largely stacked with lawyers and judges who are (broadly speaking) part of the problem; it is not the court users who have caused the justice system dysfunction (Exhibit 1f). It contains no legal real reform activists. The small number of citizens on the Commission cannot become educated about the underlying dysfunction of the legal system regarding other options without this report. Some members may have gone in with the idea that adopting the Nevada Plan is the answer for all the court's ills without in-depth investigation.

The broken status of the Nevada judiciary is a result of the multiple factors included herein which must first be addressed. The legislative focus should be taken off judicial selection and placed squarely on judicial accountability; how judges came to be in office would not have become an issue if their behavior while in office was not in question, although it is true that most citizens don't understand that judges are politicians. If judicial discipline is not first repaired, the results would only compound our current difficulties. It seems fair to assume that the intent of this bill is to restore the public's confidence in the judiciary by removing judges from seeking campaign dollars, but this is only one issue of many more serious and repairable issues.

Because government cronyism has been spoken to through multiple media articles of late, applying SJR-2 would only give the further appearance of cronyism since a group of individuals would be allowed to select our judges. If this is done, it would appear that the judicial selection committee would defend its' selection rather than take responsibility for errors in selection when judicial misconduct occurs, as it will. Changing judicial selection is not the answer. Not only could it withhold from us attorneys for judicial appointment who are knowledgeable, thorough and of balanced demeanor, it could exclude those lawyers who because they are non-political in nature, could best serve our State. As stated by Judge Stephen Dahl, in the February 2007 Communique' from the Clark County Bar Association (Exhibit 1a),

"...if that system had been in place twelve years ago when I was first elected to the bench, I don't think my chances would have been very good. At that time, I was serving as the team chief of the death penalty defense team of the Clark County Public Defender's Office."<sup>1</sup>

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<sup>1</sup>Later in this document, we will speak to judicial bias towards the prosecutorial side of law, due to the weary cry of "tough on crime".

The public would not benefit, because it then loses its only option for judicial accountability, which is the ability to recall judges (although, due to the current Nevada constitutional recall structure, it is not truly a viable option; Clark County, being the most populated area, requires the most costs and man hours to accomplish recall, giving the appearance of protection towards the majority of district judges and other public officials in the State). However, to surrender a Constitutional right to elect judges would require a system of accountability to justify the surrender of that right. The Legislature could aid citizens in the matter of judicial accountability better by amending the Constitutional standards regarding the recall process. Potential judicial candidates could bribe members of a selection committee to gain appointments.

The focus must be on judicial discipline and the opening of government records of attorney and judge misconduct before the issue of judicial selection is underway. While it is agreed that the Legislature cannot tamper with judicial decisions (which constitute judicial independence), it can create accountability structures for the judiciary, which fails as an attempt with SJR-2. If the Legislature would mandate the opening of judicial and lawyer complaints rather than allowing them exclusion from the Nevada Open Meeting Law, the citizens would have something with which to work at election, and would weed out poor lawyers from seeking the judicial post from the beginning. Statistics released from the Judicial Discipline Commission are dismal for accountability; the vast majority are dismissed without investigation. The same holds true for attorney complaints. Because of the secrecy, we can only see the reported numbers and reported actions, and have no way to confirm the accuracy of the information or even the number of filed complaints.

The provision in SJR-2 which calls for a retention vote after two (2) years is flawed. An April 19, 2006 Las Vegas Sun article on judicial overturns made an effort, but fell short with regard to exposing judicial incompetence (Exhibit 2). The most over-turned judge reported is Nancy Saitta, who recently won election to the Supreme Court in spite of her remanded cases (which cost the individuals and the taxpayer money as it works against judicial economy). However, even the facts of the article don't disclose a relevant fact which applies; and that is (for example) that the point at which a judge is seated applies. Nancy Saitta became a sitting judge in 1998. By the time the study by the University of Illinois at Champagne was accomplished (study ran only through 2003), she had been sitting for five (5) years. Due to the five-year rule in Nevada, the greatest majority of cases she heard were coming up for trial or settlement at that time, and the appeals which would have even more greatly illustrated her lack of judicial skill would have been loudly proclaimed; already the most overturned, the numbers would most likely have skyrocketed - thus alerting the voters not to elect her or re-elect her at all. Therefore, SJR-2's provision for a two (2) year period for retention, without an open judicial complaint system, would not create the means to fairly evaluate judicial competence.

If the Nevada Supreme Court had a user-friendly fully public web site which tracked overturns, recusals and judicial disqualifications along with an open complaint system, then the voters could make a sound decision. A judicial selection committee might be allowed access to that information but citizens would not know. JudicialWatch.org has created a free database on financial disclosure reports for the federal court system. The same must be established in Nevada, perhaps to be included in such a Web site. Also, if the bill draft request regarding disclosure of principals on limited liability corporations does pass, this information when it is relative to judges, could also be included.

In 1993, an attempt was made to change the Nevada judicial selection process (<http://www.leg.state.nv.us/lcb/research/library/1993/SJR05.1993.pdf>) and was defeated. It would be difficult at best to convince the citizenry to surrender a current legal right and gain nothing in return other than the strong possibility of more cronyism.

SJR-2, "The Nevada Plan" which is modeled after The Missouri Plan, assumes that the Missouri Plan is

effective. It isn't. Attached as **Exhibit 3**, 1-10-07 Article by News-Leader.com on Missouri courts is entitled, "Justice: State courts need better accountability". There is also a legal reform group there, Missouri Court Reform, headed by an attorney and his spouse, with which we have been in contact - again indicating that all is not well in Missouri. Further, the statistics for judicial complaints (2005) indicates that of 209 complaints, 205 were dismissed without investigation for lack of merit (note that the statistics for Nevada are equally dismal). Further, Missouri's judicial complaint system is similarly closed (**Exhibit 3a**). Also in existence and covering Missouri is the web site <http://ozarkopathy.com> which documents further lack of judicial discipline in the form of an audio taped conversation between Mike Reid of the Missouri Ethics Commission and Jeff Biener of <http://ozarkopathy.com> (**Exhibit 3b**). Also attached is a letter to Missouri Senator McCaskill illustrating the problem, which remains unresolved to this day. Missouri judicial accountability clearly doesn't exist in spite of their judicial selection process (**Exhibit 3c**). Missouri doesn't investigate judicial complaints any more than does Nevada (**Exhibit 3d**).

Because Redress, Inc. is in touch with legal reform activists and organizations nationwide, we have our finger on the pulse of legal reform. We watched as Senator Raggio testified in favor of SJR-2, having created the measure himself. We do not believe he fairly represented the J.A.I.L.4Judges initiative (J.A.I.L. is an acronym for Judicial Accountability Initiative Law). We have attached a copy of the California version as **Exhibit 3e**.

We submit a very rough draft of a possible Nevada Legislative Act which incorporates the Judicial Transparency Act provisions recently passed by Congress to address judicial misconduct and lack of accountability along with the Grand Jury Panel idea of judicial discipline endorsed by J.A.I.L.4Judges (**Exhibit 3f**). Actual testimony by Congress on the Judicial Transparency Act is included as **Exhibit 3g**. The idea of a Legislation-created Inspector General over unresolved judicial (and attorney) complaints would not interfere with "judicial independence" because it cannot attack judicial decisions. Another federal effort to gain real accountability over lawyers is illustrated in **Exhibit 3h**, "New Circuit Body to Probe Grievances Against Lawyers" printed in the New York Law Journal On-line, 3-13-07. Nevada should consider such ideas, to enforce checks and balances on the judiciary and the lawyers (which Nevada states is part of the judiciary; see exhibit to follow).

Another possibility, far outside the box, is the possibility of Sortition, a method of judicial selection which eliminates the need for a judicial selection or election process. It has been endorsed by Jon Roland of Constitution.org, and nationally-known trial attorney Gerry Spence (in one of his books). We attach a brief outline on sortition as **Exhibit 4**. While an Article 6 Commission has been established to review judicial selection, we do not believe they have considered this method. A copy of this work will be submitted to them for their review. While Nevada is not known to be #1 in the nation for good societal factors, and while Nevada would be the first state in the nation to have Sortition, it is worthwhile to consider due to the issues included in this document.

The Nevada legal system is broken and has been for a long time. Our problems are legion. We have attached a copy of our recently submitted paper to the Assembly Select Committee on Corrections, Parole and Probations, along with the attachments which represent a mere sampling of legal system dysfunction (**Exhibit 5**). The issue of judicial campaign contributions, prepared by PLAN (on-line at <http://www.planevada.org/reports.htm>) is valid and valuable, and we appreciate that the Legislature is concerned regarding that issue. However, there is also another option to fairly and reasonably resolve the matter of campaign contribution, which was devised by an Idaho political action committee. They suggest a general judicial campaign fund be created and managed by the Secretary of State's office. Any judicial campaign contributions would be submitted to the fund, and divided up and released equally to each candidate. Those citizens or lawyers wishing to "buy" a judge could only then do it through bribery. Therefore, campaign contributions could not be used to unfairly influence

judges. SJR-2 is not needed and would aid the justice system dysfunction.

While we salute the Legislature for its intention of creating judicial accountability by deleting the need to solicit campaign money (Exhibit 5a, 3-20-07 Las Vegas Sun article, "Taking cash power out of the judiciary"), we also provide extensive information regarding the real underlying causes of citizen distrust of the judiciary in the hope that the Legislature will gain greater awareness and act on the true issues, along with some information on past failed Legislative attempts.

Because lawyers are considered part of the judiciary (Exhibit 6, Letters to and From Nevada Attorney General's office), information regarding them is included:

"In response to your letter dated August 18, 2004, the Nevada Open Meeting Law Manual §4.02 states, "that since the definition of 'public body' under NRS 241.015(3) does not include a judicial body, it appears the Open Meeting Law does not apply to the Judicial Selection Commission and the Commission on Judicial Discipline." The State Bar of Nevada is created by the rules of the Nevada Supreme Court, and as a result, it is also a judicial body. Therefore, neither the Commission on Judicial Discipline nor the State Bar of Nevada must comply with the Open Meeting Law."

Because the Nevada AG considers lawyers part of the judiciary, this points to the issue of lawyers in Legislature as violating the separation of powers' doctrine in Nevada's Constitution. If the AG excludes lawyers from the OML due to this reasoning, it creates a new problem. We recognize that lawyers are "officers of the court". The issue of separation of powers was widely covered in the media with regard to the executive branch (Dina Titus, David Perkins and more), but the issue of lawyers from the judicial branch was completely overlooked (Exhibit 6a).

We recognize that our Legislators do not have time to digest all the information included herein, but it is our desire that it be made a part of public record, under this bill, for the purpose of creating a resource should Legislators choose to create accountability in the future. Also, it's necessary to illustrate that these topics have been well researched. We cannot submit all the information we have on hand; as it is, this project contains a wealth of resources which can be added to in future.

The Legislators may want to review the National Center for State Court treatise, "Best Practices in Building Public Trust and Confidence: Enhancing Judicial and Legislative Branch Relations", published in Winter 2005. It can be found on-line at [http://www.ncsconline.org/Projects\\_Initiatives/PTC/PublicTrust7Wtr05.htm](http://www.ncsconline.org/Projects_Initiatives/PTC/PublicTrust7Wtr05.htm).

The Legislators may also wish to review position paper by Uncertain Justice: Politics in America's Courts, 2000, "Balancing Act - Legislative Power and Judicial Independence".

Denial of the true issues regarding the complete breakdown of our justice system is on-going. We are in hope that this material will educate and edify our Legislative authorities, media, citizens and other legal reform advocates on the topic, so that real and positive change can be established.

The rest of the issues are listed in alphabetical order.

### Judicial Accessibility

Citizens cannot afford the legal system for civil matters; for criminal matters, the public defenders' system is at fault. The system is for the wealthy. Pro se's, while growing in numbers drastically, often encounter pro se bias. An example is Exhibit 6b, Associated Press

article of 2-28-07, "Parents contest litigation limits; Lawyer should not be required, high court told".

<http://halt.org> (an organization of lawyers for legal reform): How Accessible is the Civil Justice System? - Attached to Exhibit 5.

- Each year 38 million low- and moderate-income Americans are closed out of the civil justice system because they cannot afford to hire a lawyer.

- 71% of respondents had faced a legal situation that might have led them to hire a lawyer in the past year, but only half of them planned to hire one. The most frequent reasons given involved high legal fees.

Redress, Inc. will soon release a national study on Legal Abuse Syndrome®; with regard to costs, an average of \$79,000 was calculated for a contested custody case. If a litigant cannot afford to participate, they lose their children, their home, can be placed in jail, fined or more. This creates a true catch-22 situation. One cannot "win"; even a "win" costs excessive amounts of money, but at least the lawyers can make a lot of income on broken families.

Even when litigants hire an attorney, betrayal of the client is so rampant as to allow us to recommend that all attorney phone calls and personal visits be tape recorded.

We hope that the media, in reviewing this report, will investigate and publish the number of family court litigants placed in jail or sanctioned financially due to poor judicial demeanor. This information could be ground-breaking information on court dysfunction. Although litigant's can fight a bad sanction order, they often have to hire an attorney to do so; even when they "win" they lose.

We also hope that the media will investigate the use of "psych evals", the practice of judges ordering a litigant to see a specific psych evaluator, even when that person may not be on the insurance plan. We believe strongly that any qualified and licensed psych evaluator should be able to submit reports to the courts. We find it appalling how many false psychiatric diagnoses are released to the courts. Just because a family breaks up does not mean that the parties are mentally ill. This is another extreme cost burden on litigants, for which they will be punished if they don't participate.

The National Law Journal, on 1-18-04, published, "9<sup>th</sup> Circuit Feels Pro Se Pressure", indicating a massive increase in non-represented litigants in court. The reasons were well discussed (Exhibit 7).

However, we are over-lawyered, which doesn't necessarily translate to justice: Parade Magazine, 3-5-06, "So... Sue Us":

"If you think America is awash in lawyers, you're right. We found these fascinating numbers in Paul Grobman's new book *Vital Statistics*: There are more than a million lawyers in the U.S. - one for every 274 people. (China has one lawyer for every 12,745 people.) New York has the most lawyers of any state (140,000), North Dakota the fewest (1,297). In Washington, D.C., there is one lawyer for every 14 residents."

### Judicial Accountability

Nevada Judicial Canons of Ethics are found on-line, with explanation on Nevada Center for Public Ethics web site at <http://www.nevada-ethics.org/newsJudicialcomplaint.html>.

Nevada Attorney Rules of Professional Conduct are found on-line at <http://www.nvbar.org/Ethics/e2k.htm>.

Accountability for lawyers and judgments is sadly deficient and profoundly secret. Statistical reports routinely show that nearly all complaints are dismissed, on their face, without investigation. Citizens are working to bring accountability to the judiciary, but are opposed by the judiciary itself. This is why a national effort has begun to institute citizen oversight boards on attorney and judicial complaints. In Nevada, we have established the LVMPD Citizen Review Board, when once it was finally recognized that police agencies cannot fully discipline themselves. We strongly believe that the same is needed for attorneys and judges. Again, refer to **Exhibit 17**.

While the judiciary is well aware that it is under verbal and written attack, they have routinely responded with blanket statements to the effect that "judges deserve our respect, not our scorn". We believe that a great deal of the problem of lack of judicial accountability is attributable to the issue of self-granted judicial immunity, a later topic on this report.

<http://halt.org/> (an organization of lawyers for legal reform): How Accountable is the Civil Justice System? - Attached to **Exhibit 5**, is clearly illustrative of the lack of accountability to the citizens that the legal system serves:

- According to the American Bar Association, in 2002, 121,000 complaints were filed against the nation's 1.2 million lawyers.
- Of these, 121,000 complaints, only 3.5 percent led to formal discipline and just one percent resulted in disbarment.

Such things as attorneys abandoning clients after placing large liens on cases is rampant, we believe in, in Nevada. In one known case, a litigant has had eight (8) successive lawyers; the last one placed a \$230,000 lien on her home when he withdrew after four (4) months after suborning perjury (she tape recorded him).

The federal statistics for judicial accountability are dismal; 999 out of 1,000 complaints are dismissed without investigation.

Court watching (see also section under Judicial Secrecy) has evolved in a number of states as a means to observe judicial competence. Redress, Inc. published an article in Diogenes magazine in the 2005 edition, speaking to the topic (**Exhibit 8**). Redress is a member of the Southern Nevada Domestic Violence Task Force through the Victim Advocacy Committee. We were devising a formal court-watch program for Nevada which was shifted away from the family courts shortly before the last election cycle by the then-chief of the Committee. It appears somewhat obvious that the courts didn't want information about the courts being released prior to elections. Decisions like that undermine the good of society.

Please see **Exhibit 9**, a public reprimand for California "Honorable" Craig Kamansky:

"In the course of a commission investigation concerning his off-bench conduct, Judge Craig Kamansky was asked by the commission to supply certain videotapes. The judge

agreed to supply the tapes, but before doing so, he deliberately over-taped them. When asked by the commission about the altered videotapes, the judge repeatedly denied the deliberate over-taping. When presented with evidence to the contrary, the judge ultimately admitted his misrepresentations.

“Judge Kamansky’s actions constituted conduct prejudicial to the administration of justice that brings the judiciary into disrepute. The conduct was committed in bad faith.”

For this, tampering with evidence and lying to a tribunal, Judge Kamansky was issued a public reproof - a mere public reproof! He wasn’t removed from office or criminally prosecuted. This is an example of the lack of respect in the integrity of the judiciary by citizens. Judges simply won’t police their own; they slap hands. Citizens committing the same crimes would not have the same protections.

Our own District Judge Donald Mosley should have been removed from office for using judicial letterhead and resources to deny his child’s mother the right to participate with the child’s school and records. Instead, he had his hands slapped. This is not accountability. Behavior like this from a litigant would likely have resulted in fraud prosecution and incarceration.

Other examples include two articles from the St. Petersburg Times which illustrates a judicial discipline commission’s propensity to act against the public good, “Judge accused, then given more authority” (Exhibit 10a) and “Misbehaving judge can serve six final months” (Exhibit 10b). Routinely, we know that judges who are removed from office still retain their retirement benefits, which is an appalling waste of taxpayer money.

<http://halt.org>, 6-22-06, “HALT urges ABA to Strengthen Judicial Accountability”, Exhibit 10. Please note that these are attorneys working for legal reform. Two other attorney groups are: Victims of the System (<http://victimsofthesystem.org>) with an entire board of directors who are attorneys, and National Judicial Conduct and Disability Law Project (<http://www.njcdlp.org>) whose two principles are attorneys. On the other hand, lawyers who point out judicial foibles are being disbarred for failure to uphold the dignity of the judiciary; a number of them are known to us as legal reform activists.

Judicial Discipline Commission and State Bar complaints require confidentiality (see LV RJ article, see complaint forms.) The Las Vegas Sun editorial on 7-21-06, “Judging the judges”, states their position with regard to the lack of accountability through our discipline commissions (Exhibit 11).

Halt.org advocates for The Legal Consumer Bill of Rights, which needs to be established fairly in Nevada, Exhibit 12.

Legal reform attorney Gary Zerman, 4-14-06, “Reply to ‘Judging the Judges’, California Lawyer Magazine, 4-06, Exhibit 13, voices our nationwide discontent.

National Judicial Conduct and Disability Law Project (NJCDLP), The Weinstock Act (Exhibit 13a) - Seeks federal whistle-blower protections for lawyers reporting judicial misconduct, to preclude judicial retaliation (see section on Judicial Demeanor).

Please see “Duty to Report Misconduct by Other Judges and Lawyers”, etc., Hofstra University School of Law, Prof. Leslie W. Abramson, position paper (Exhibit 13). Then please compare it

to the actuality of application (Exhibit 14, "Criticism of Judges Must have 'Reasonable Basis', Massachusetts Court Chooses This Standard Over 'Actual Malice'", and see how criticism of judges results in attorney disbarment even over Constitutional protections on free speech. We are aware and sometimes in contact with attorneys disbarred for no other reason than criticizing the judiciary.

Please see Exhibit 13b, New York Daily News, 3-11-07, "Feed the Judicial Watchdog", found on-line at [http://www.nydailynews.com/opinions/2007/03/11/2007-03-11\\_feed\\_the\\_judicial\\_watchdog.htm](http://www.nydailynews.com/opinions/2007/03/11/2007-03-11_feed_the_judicial_watchdog.htm).

In April of 2006, S.B. 2678 was introduced in Congress by Senator Grassley. It was designated the Judicial Transparency Act (Exhibit 15), "to provide for the detection and prevention of inappropriate conduct in the Federal judiciary". The bill passed, in a weaker version. Its' most interesting provision was the desire to create an office of "inspector general" in order to create more judicial accountability. There were arguments for and against its' passage; lawyers on both sides argued opposite viewpoints. Some said it would impair "judicial independence", a trite phrase that we in legal reform note has been unjustly expanded beyond lawfulness. We are not concerned with judicial independence which speaks only to the judiciary's right to make case decisions without influence. We know that the judiciary, like the other branches of government, can be held in checks and balances by the other two branches of government (but rarely is).

We have evidence of federal tape-tampering by Judge Lloyd George, which we duly reported to the 9<sup>th</sup> circuit court. When all was said and done, it was admitted that there were two different copies of the tape of the proceedings to which we were witnesses, however, the matter was then summarily closed. This is another way in which the judges breed contempt for themselves; when an ordinary citizen would go to prison for obstruction of justice and tampering with evidence, but a judge goes on his way, this is not a public perception of cronyism, but the real thing (Exhibit 16).

We believe that the Nevada Legislature has it within its' power to create an inspector general position to which citizens would turn when the Judicial Discipline Commission fails to perform.

With regard to the Oath of Office, administered to every elected and public official, it has no meaning if it is not enforced. It's a mere formality. We do not think that was the intention of the framers of the Nevada Constitution, that the oath of office be a non-issue in misconduct cases:

NRS 282.020 Form of official oath. Members of the Legislature and all officers, executive, judicial and ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath:

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support, protect and defend the Constitution and Government of the United States, and the Constitution and government of the State of Nevada, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance and loyalty to the same, any ordinance, resolution or law of any state notwithstanding, and that I will well and faithfully perform all the duties of the office of \_\_\_\_\_ on which I am about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury.

With regard to the topic of Judicial (and lawyer) Discipline Commissions, both State and

Federal, we offer the following:

1. Law School Prof. Anthony D'Amato, position paper, on the topic, "Self-Regulation fo Judicial Misconduct Could be Mis-Regulation", published at 89 Michigan Law Review 609 (1990), **Exhibit 17**. We agree that judges cannot self-police.
2. Findlaw.com article, 8-04, "Thoughts on the Law Addressing Bad Federal Judges: Self-Policing Isn't Working, But Is There a Good Alternative? **Exhibit 18**). We believe that a good alternative is either a citizen grand jury over judicial complaints or an inspector general as part of the Executive or Legislative branches to oversee the complaint process.
3. Center for Judicial Accountability, "Without Merit: The Empty Promise of Judicial Discipline", **Exhibit 19** by Elena Sassower.
4. Associated Press, 8-7-02, "Self-policing federal judges rarely impose penalties", **Exhibit 20**.
5. LA Daily Times, 8-7-02, "Federal Judges Seldom Discipline Colleagues", **Exhibit 21**.
6. Attachment, 9-14-92 Censure of the "Honorable" Judge Craig Kamansky by the California Commission on Judicial Performance; obstruction of justice, shows how ineffective Judicial Discipline Councils are, without citizen oversight (**Exhibit 9**).
7. Law.com, 10-04-05 Article, "9th Circuit's Kozinski Blasts LA Judge, Majority in Discipline Case (**Exhibit 22**).
8. Legal Reform Attorney Gary Zerman Discipline Case, **Exhibit 23**, responding to item #7 above.
9. Las Vegas Sun Editorial, 7-21-06, "Judging the judges", **Exhibit 24**.
10. Las Vegas Review Journal Editorial, 4-9-06, "The system is 'very badly broken; Is reform of state's judicial discipline system on the way?", **Exhibit 25**.
11. Las Vegas Sun Letter to the Editor, 6-20-06, by Juli T. Star-Alexander, "People must keep tabs on judges they elect", **Exhibit 26**.
12. Associated Press, 4-7-06, "Complaints Against Nevada judges can take years to resolve", as reported by J.A.I.L.4Judges, **Exhibit 27**.
13. Las Vegas Review Journal, 2-11-06, by Juli T. Star-Alexander, "Lawyers rating judges accomplishes little", **Exhibit 28**.
14. Las Vegas Review Journal, 5-11-05, by Knight Allen, "Rule of Law", **Exhibit 29**.
15. In the matter of Judge Donald Mosley, abuse of authority, the penalty received was a mere slap on the hand. He had to know that writing a letter on judicial letterhead to send to the child's school forbidding contact with the mother was a serious abuse of office. His sentenced punishment was hardly calculated to increase the public's faith in the judiciary (**Exhibit 30**).

16. Courant.com, 9-17-06, "It May Take A Constitutional Amendment to Rein in Judiciary", **Exhibit 31.**
17. Thenorthwestern.com, 1-07, Editorial - "New blood might do state's lawyer review system some good", **Exhibit 32.**
18. Pittsburgh Tribune-Review, 2-17-03, "Disbarment not the end for lawyers", **Exhibit 33.**
19. Chicago Tribune, 6-3-04, "When judges investigate judges", **Exhibit 34.**
20. Los Angeles Daily Journal, 4-24-96, published "State Bar's Narrow view of Discipline", **Exhibit 35.**
21. Los Angeles Daily Journal, 12-20-99, "The Undisciplined System - State Bar 'Reforms' Need Reforming", **Exhibit 36.**
22. The Star-Ledger, 11-29-05, "Crackdown on ethics sweeps up lawyers", **Exhibit 37.**
23. Wall Street Journal, 8-10-94, "The ABA Has Fallen Down on the Job", **Exhibit 38.**

Specific to Nevada, articles regarding the JDC, judicial errors and discrepancies:

1. Las Vegas Sun, 4-9-06, "Justice at a snail's pace - Judicial Discipline commission can be slow to resolve misconduct allegations", **Exhibit 39.**
2. Las Vegas Review-Journal, 4-9-06, "The system is 'very badly broken' - Is reform of state's judicial discipline system on the way?", **Exhibit 40.**
3. Las Vegas Review-Journal, 3-22-06, "Cleaning up court records - Nevada Supreme Court justices criticize lower-court judges for what they say is an increasing number of errors and discrepancies in written judgments", **Exhibit 41.**
4. Las Vegas Sun, 3-20-06, "Too many mistakes - Supreme Court unhappy with written orders", **Exhibit 42.**
5. Las Vegas Sun, 7-27-06, Letter to the Editor, "Nevada's judges should not be above the law", written by a retired lawyer, Paul L. Larsen, **Exhibit 43.**

The Federal Courts Improvement Act of 1996, Public Law 104-317, 104<sup>th</sup> Congress, establishes:

- (a) Non-liability (NOTE: 28 USC 2412 note) for Costs - Notwithstanding any other provision of law, no judicial officer shall be held liable for any costs including attorney's fees, in any action brought against such officer for an act or omission taken in such officer's judicial capacity, unless such action was clearly in excess of such officer's jurisdiction.
- (b) Proceedings in Vindication of Civil Rights - Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended by inserting before the period at the end thereof " , except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be

held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction".

- c) Civil Action for Deprivation of Rights - Section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended by inserting before the period at the end of the first sentence: ", except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable".

Judicial accountability means nothing.

### Judicial Demeanor

Supreme Court Justice Breyer was widely quoted as saying that "sunlight is the best disinfectant". We do not see sunlight in the current system, nor do we see it with the implementation of AJR-2 and even less so.

Supreme Court Chief Justice Warren Burger, while speaking to the American College of Trial Lawyers (quoted in Time, 6-27-77) stated,

"... ours is a sick profession marked by incompetence, lack of training, misconduct and bad manners. Ineptness, bungling, malpractice, and bad ethics can be observed in court houses all over this country every day ... these incompetents have a seeming unawareness of the fundamental ethics of the profession ... the harsh truth is that ... we may well be on our way to a society, overrun by hordes of lawyers, hungry as locusts, and brigades of judges in numbers never before contemplated."

Judges obtain office without psychiatric evaluation of fitness for office, without drug testing, without revealing their discipline records. We have no way to know whether our judges are either sane or functional, and based on what we have seen, there is concern about this issue.

Redress has collected a brief overview of maxims about the judiciary, which clearly indicate the judicial role (Exhibit 44, "Please think hard about the role of judges in society"). From the first, such famous citizens as Patrick Henry warned us that, "If we fail to check the power of the judiciary, I predict that we will eventually live under judicial tyranny". Legal reform activists know that it has already happened, and wonder how to pull back from such unlawful control.

Lawyers and judges are subject to all the same falibilities as is the rest of society (select Nevada cases are illustrated in Exhibit 5, Henderson Judge Pemplosky arrested in a prostitution sting, attorney Whittemore arrested for child pornography, and more). Nationwide, the outlook is bleak, with an Oklahoma judge guilty of masturbating on the bench, and a New York judge taped while coaching a lawyer and taking a bribe (Exhibit 44a, the judge offered to prove that judicial candidates were paying \$50,000 or more for their nominations, a real fear with a judicial selection committee as proposed under SJR-2). For those who wish to gain more enlightenment, we would suggest you go on-line to <http://victimsoflaw.net>, and see their collection of nationwide articles of attorney and judicial misconduct.

Because lawyers and judges are subject to the same foibles as citizens, but because they carry an excessive amount of authority and discretion which can then be abused, they need far, far

more oversight than is in existence now, anywhere in the U.S. That judges can be corrupt was well documented in the Greylord scandal (see **Exhibit 5**). The corruption convictions of our Clark County Commission Board Members indicates that any politician can succumb to corruption including judges.

Judicial neutrality is a basic tenet of our justice system. That judges can be in violation of this tenet is illustrated by **Exhibit 45**, a copy of my legal motion with regard to judicial disqualification of a judge on a case in Idaho. Contained within the Affidavit is the legal argument for maintaining the federal standard on judicial neutrality. It is our opinion that Nevada judges often act against judicial neutrality, and we have seen it through court-watching activities on multiple occasions. Because the need for judicial neutrality is so profound as a means to ensure justice, the violation of it is truly egregious. However, even when litigants are in court and the lawyers are aware of the lack of neutrality, lawyers rarely take the judges to task through the filing of recusal and/or judicial disqualification motions. Further, for pro se litigants it can force them to become private investigators. Failure to secure reasonable evidence ensures injustice.

We do have reason to believe that litigants are black-listed in Nevada if they successfully sue casinos, Nevada's largest source of revenue and employment. We also have reason to believe that judges on multiple case litigation talk to each other (Family Court Judge Nick DelVecchio reported to a family court employee that she was going to lose her federal case, before the case was shut down). These things indicate that the judges involve themselves in matters in which they are not a part, and that they can use that information unlawfully against litigants.

Bailiffs and other court personnel engage in unprofessional behavior which would be precluded by any rules of conduct for non-professional court employees, if such exist in Nevada at all. In this document and its' exhibits are two examples of suffering at the hands of bailiffs (Carlton McGee and Brandon Argolino). The behavior of the court employees is a reflection of the often-grandiose behaviors of our judges and lack of attention to facts and law of the case (**Exhibit 45a**, Las Vegas Sun Editorial, 4-3-07, "Six-minute justice").

While much effort is being made to convince the Legislature to purchase more judges, we would like to see an analysis of the length of time it takes to resolve cases in each of the courts. Are there cases in Family Court that have been in trial for twelve months or more? Are there accused citizens on bail for 3-1/2 years pending trial? In Idaho, there is a financial penalty against judges who have cases on their desks for more than six (6) months without action. We would point out that there is no shortage of judicial applicants, and so therefore the pay issue is moot; Nevada judges are 20<sup>th</sup> in the nation in pay as it stands.

**Exhibit 45b**, Las Vegas Sun, 4-2-07, "Family Court makes pitch for a few more judges".

**Exhibit 45c**, Las Vegas Review-Journal, 3-22-07, "Clark County judges costly; Lobbyist speaks against price tag of 10 new judgeships".

**Exhibit 45d**, Las Vegas Review Journal, 3-11-07, "An air ball on judicial pay".

**Exhibit 45e**, Las Vegas Sun, 3-22-07, "Judges take their shot; Bump in paychecks hinges on some speedy finessing".

#### Judicial Bias Against Defense:

Many judges are former prosecutors; they use the "tough on crime" stance to get elected, which is not perceived when a defense attorney runs for judicial office. However, prosecutors actually have more authority in a criminal matter than the judges

as they decide not only which cases are prosecuted and for what length of sentence, but are almost allowed free reign to decide which evidence to release and which to withhold. An example of this type of behavior has been well-documented by the media regarding the recent Duke University "rapes", for which a prosecutor withheld DNA evidence exculpatory to the alleged perpetrators.

That prosecutors engage in misconduct was not widely known until recently. A book published by the Center for Public Integrity (information attached as **Exhibit 46**), is entitled "Harmful Error: Investigating America's Local Prosecutors". We are in hope that the Nevada media will investigate this matter, report and publish. This explains the bias and prejudice of judges towards the prosecution, which violates the federal standard of judicial neutrality, resulting in a loss of due process for the accused.

The appalling over-use of plea bargains indicates that if all defendants were to assert their right to trial, the entire legal system would shut down overnight. Intimidation of the accused keeps the legal machine grounding out new victims daily. Accountability is nil.

Even on the rare occasions that a judge does see a prosecutor or defense attorney at fault, there is no impact on the accused (**Exhibit 46a**), "Judge takes to task public defender". Further to the issue, see **Exhibit 46b**, 3-29-07 Las Vegas Sun, "Justice fails again and again, he spends 15 years in prison". See **Exhibit 46c**, Las Vegas Review-Journal, "Prosecutors' tactics challenge courts". See **Exhibit 46d**, Las Vegas Review-Journal, "Porous Defense". See **Exhibit 46e**, Las Vegas Review-Journal, 3-27-07, "Court officials review indigent defense".

The justice system is broken at all levels and citizens are being greatly harmed. With regard to criminal allegations, this type of behavior continues even though our prisons are massively overcrowded, poorly run, a hazard to inmates and guards alike, and providing substandard medical care.

#### Overuse of Sanctions:

Please see **Exhibit 47**, a Law.com, 11-16-05, "Judicial Conduct Commission Targets Contempt Abuse" (New York) - bullying tactics by judges. As court-watchers we are well aware of the use of sanctions (financial and jailing) of litigants) without just cause. Nevada media should conduct an investigation into this problem and publish the results. We have many such examples as those included here:

1. In the case of Brandon Ardolino (a parent whose ex-spouse was taking and selling crystal meth) was vilified in court on multiple occasions, and even placed in jail for ten (10) days. All he was doing was trying to protect his child. His case didn't turn around until his spouse was arrested for the drug dealing and he faxed the article to the judge who then reversed custody after making comment to the effect that "she didn't look like a drug dealer". When a litigant is placed in jail, they lose their job. It's well known that most citizens live paycheck to paycheck. Missing a paycheck or two can result in loss of job, home, credit... it can spiral into bankruptcy which harms us all.
2. We are aware of one sealed case in which the litigant has been sanctioned three times, for thousands of dollars, for what we do not consider just cause; her

spouse, who was provably late with his spousal support payments but was represented by counsel, was only sanctioned \$200. We believe this process is more about teaching pro se's that they are not valid in court and must hire a lawyer, than it is about justice applied. It is about financially feeding the legal machine in this country.

3. In the case of Carlton McGee, the opposing spouse had filed a number of domestic violence allegations against him, culminating in a false charge of sexual abuse against the daughter. None were found to be credible. Redress, inc., was in court before Judge Cynthia Dianne Steele when the CPS report was reviewed. The charges were not true. The court did not punish the false reporter, and instead lost its judicial neutrality stance (see Exhibit 48).

These are only three examples of all those we could cite. False allegations are not punished in court, although they should be for they constitute fraud upon the court. When Judge Steven Jones was arrested for domestic violence based on the accusations of his girlfriend, those charges were eventually dismissed, but the girlfriend was not prosecuted for filing false police reports. (Also, speaking to that issue, we would like to know how Judge Jones was released from custody by Judge Donald Mosley.)

#### Judicial Retaliation:

4-27-06 Senate Bill S.2678; "To amend title 28, United States Code, to provide for the detection and prevention of inappropriate conduct in the Federal judiciary." Contains section on Whistleblower protection. Contains section on "Civil Action" - for judicial retaliation.

Also, the Weinstock Act, sponsored by attorney legal reform group, National Judicial Conduct and Disability Law Project, would work to create whistle-blower protection for lawyers who are attempting to expose judicial misconduct (Exhibit 13a).

See also, section to follow regarding Judicial Education with regard to judicial retaliation.

The Nevada Legislature could create whistle-blower protection for lawyers in order to weed out bad judges.

#### Pro Se Bias:

Until recently, pro se's had little to work with in Nevada's courts. The Nevada Supreme Court released the Pro Se Pilot Program, but upon review it is greatly flawed. It still favors attorneys.

While it is comprehensible to most people that those who attend law school do not wish to be trumped in court by non-lawyers, it is still mandated under federal law that non-lawyers may represent themselves (*Farretta v. California*). It is equally understandable that lawyers, in order to financially succeed, must sue. Judges (who in most venues across the country) are first lawyers, would have an inherent bias in favor of attorneys, and contempt for non-attorneys who may be perceived as infringing on the legal domain.

We are in hope that the Nevada media will investigate the phenomena of pro se bias,

report and publish. We believe, for just cause, that some of the most egregious abuses of authority happen in pro se cases in the believe that the pro se's won't understand that their inviolable right to due process are being set aside.

Other Bias:

Religious, race, gender, sexual orientation and disability biases also exist. Members of same churches, when also judge/attorney in a case, can result in great injustices, especially in those doctrines which do not believe in equal rights for all people. Criminal sentencing has been identified in multiple venues as resulting in skewed convictions when comparing African-American vs. Caucasian defendants. Because most bias is an unconscious process, a biased person in the justice system may feel fully justified in their behaviors while acting wholly against the public good.

Please refer to the section on judicial immunity with regard to the issue of judicial misstatements of fact, which is a matter of judicial demeanor, but also clearly a matter of judicial accountability. It has application in both places of this document. Judges who engage in this practice re-write the facts of the case without support in actual facts or law, thus denying justice. The Petition for Writ of Certiorari by Nevada Attorney James Wray speaks directly to this issue. However, law school professors such as Morgan Freeman, have identified this practice with disgust. See Exhibit 49, Law Prof. Anthony D'Amato, "The Ultimate Injustice: When a Court Misstates the Facts".

Sacbee.com Editorial, 12-26-06, "Judge needs another job - Brooks doesn't have judicial demeanor", Exhibit 50. The Nevada media would do well to report on judicial demeanor, and to listen to reports made to them by court watchers, often with affidavits or other evidence.

Los Angeles Times, 12-5-06, "The robe, the gavel, the ego trip", Exhibit 51.

San Francisco Chronicle article, "Courtrooms guilty of stress disorder", Exhibit 52, printed from Karin Huffer, M.S./M.F.T. web site at [www.legalabusesyndrome.org](http://www.legalabusesyndrome.org). Ms. Huffer is the author of "Overcoming the Devastation of Legal Abuse Syndrome" (media booklet attached as Exhibit 53). The Legal Abuse Syndrome questionnaire has been distributed nationally, and collected for our study. The initial results about our judiciary are appalling. We plan to release the study soon to the media. See further information to the topic under the heading Judicial Education.

Legal Community is Dysfunctional - This topic is difficult at best, especially with the awareness that a large percentage of our Legislators are lawyers. However, our work would not be complete unless we included this topic.

1. California Lawyer Magazine, poll from 3-91, regarding lawyers' perceptions of their own profession, Exhibit 53a. 36% answered they are so unhappy with their career they would change professions, 16% rated themselves "Unhappy but inert". 28% stated they are less happy practicing law than when they began. 70% would start a new career if an opportunity presented itself. 81% found that the use of hardball tactics and uncivil behavior is growing among lawyers. 79% would not advise their children to become lawyers.
2. American Judicature Magazine, July-August 2006, Vol. 90 #1, "Providing Help for Judges in Distress", Exhibit 53b.

3. Missouri Bar Article: "I Wish I Would Have Called You Before... Depression and Suicide: Make Sure You Don't Utter Those Words", **Exhibit 54**.
4. WorldNetDaily Article: "Laughing all the way to the bank?", **Exhibit 55**.
5. New York Lawyer Magazine: "Substance Abuse Persists as Law Schools", **Exhibit 56**.
6. Related to topic, Business Magazine, "Lawyers Can't Pass the Bar", **Exhibit 57**.
7. Oklahoma Bar Assoc., "Lawyers: Are We a Profession in Distress?", **Exhibit 58**.
8. The Boston Globe, 1-11-04, "From Ballistic to Holistic"; includes statistics, "Only 27 percent of lawyers polled by the American Bar Association in 2000 reported being "very satisfied" with their professional lives. The remaining 73 percent described themselves as "somewhat satisfied," at best, or "very dissatisfied," at worst. Indeed, lawyers have the HIGHEST RATE OF DEPRESSION AMONG 105 PROFESSIONS, according to a Johns Hopkins University study (emphasis added.) **Exhibit 59**.
9. FBI press release, 5-19-06, "Lawyer Sentenced to Five Years in Prison for Child Pornography Offenses", **Exhibit 60**.
10. Las Vegas Review-Journal, 6-27-06, "Prostitution sting nets part-time judge", **Exhibit 61**.
11. Los Angeles Daily Journal, 7-14-98, "Megalomania is Occupational Hazard for Judges", **Exhibit 62**.
12. Los Angeles Daily Journal, 8-15-02, "Black-Robe Hubris Wrecks Judicial Careers", **Exhibit 63**.
13. Associated Press, 12-95, "Injudicious behavior can affect our judges", **Exhibit 64**.
14. Las Vegas Review Journal, 3-24-07, "LV city attorney accused of seeking special treatment; Lawyers' group chief makes charge in domestic violence case", **Exhibit 64e**.

An extensive review of judicial and attorney misconduct may be found on-line at <http://victimsoflaw.net>.

In addition, the recent take-over by the Nevada judiciary of the duties of elected County Clerk Shirley Parraguirre (reference in **Exhibit 64a** and **64b**, which started in April 2006, **Exhibit 64d**) appears to be a judicial power grab resulting in less accountability of our the judges. As was explained in the section above on Judicial Accountability, Federal District Judge Lloyd George engaged in tampering of records (exhibits attached). However, even court clerks are not immune to altering court records (**Exhibit 64c**), "Former Court Clerk Pleads Guilty to Altering Records".

Without proper checks and balances, justice doesn't exist. SJR-2 will not alter that fact, and adds to the public distrust of the judiciary.

### Judicial Education

Redress, Inc., has been engaged in a national study on Legal Abuse Syndrome©, which we believe is a form of post traumatic stress disorder. The study is nearing completion, and the first release is forthcoming to the media. The work can be more fully explored by seeing the web site of Redress, Inc. consultant, Karin Huffer, M.S./M.F.T., on-line at [www.legalabusesyndrome.org](http://www.legalabusesyndrome.org). The work will be submitted for peer review for possible inclusion, down the road, into the DSM database. However, Exhibit 65 should be reviewed by all judges and is Ms. Huffer's work entitled, "Court Accessibility for Those with Psychiatric Injury: Legal Abuse Syndrome as a Psychiatric Injury and Diagnosable Subcategory of Post Traumatic Stress Disorder".

The judges must know, especially in family law and domestic violence cases, that they must not add to the trauma by discriminating in any way against the litigant claiming stalking, domestic violence or child abuse. Instead, as domestic violence advocates see, the judges often punish the reporting parent and grant custody to the abuser. In one case, we have a copy of a hearing in which the reporting citizen was threatened with arrest during a domestic violence hearing; ironically, the final outcome was that the accused domestic violence offender was later found "guilty but mentally ill" in the firebombing of Mormon Churches. The court must maintain neutrality; the court must not add to the burden of the victim; the court must admit that it cannot project the outcome of any case without full adjudication. The judges must be taught about court accessibility and the signs and symptoms of post traumatic stress disorder and situation stress disorder.

Note also that the Legislature could create a registry of domestic violence offenders for the public good.

Judges violate matters of the U.S. Constitution, as we see through court-watch activities. Two examples (of many):

1. We are in possession of a transcript in which the accused asserted his right to speedy trial, which meant that the State was required to take the case to trial within 60 days. 3-1/2 years later, Judge Donald Mosley admitted that the case had gotten away from him, and that he didn't understand how that happened. At the same hearing he admitted that over 700 cases had been taken away from him. He then turned the case over to Judge Pavlikowsky.
2. During court-watch of the same case, we learned that Judge Pavlikowsky had issued a Motion in Limine for the prosecutors, excluding any prior bad acts to be admitted before the jury for the purpose of prohibiting juror prejudice. Later, the prosecutors admitted it anyway, in defiance of the court order; the defending attorneys attempted to declare a mistrial, but Judge Pavlikowsky would not agree. Therefore, the Motion in Limine was a waste of time.
3. A third example comes from the University of Cincinnati College of Law (on-line at [http://papers.ssm.com/sol3/papers.cfm?abstract\\_id=886363](http://papers.ssm.com/sol3/papers.cfm?abstract_id=886363) "Why Summary Judgment is Unconstitutional", by Suja A. Thomas. The practice of summary judgment is in practice widely and denies our right to jury trial. (Exhibit 65a.)

Constitutional violations are certainly grounds for appeal; however, when judges participate in those violations knowingly, they are either ignorant of the U.S. Constitution or they don't care. Behaviors of this sort result in lack of public trust in our judiciary. It also costs the taxpayer more money to rectify these judicial behaviors, and for those who are unfairly convicted due to

this type of judicial behavior, they lose literally years of their life pending appeals. We believe that Constitutional violations are a pattern and practice in our courts and are in hope that the media will step in, investigate and publish.

The issues of family court dysfunction were visited by the Legislative Commission's Subcommittee on Family Courts (ACR 32) back in November 14, 1997. The materials are on file with the Legislative Council Bureau's Research Division, and copies of all materials are in our possession. Then, in 2005, SB 109 (Mandatory Joint Custody Bill) was reviewed; significant material was submitted by Redress, Inc. upon request of Senator Mark Amodei, but was subsequently thrown away and not made part of public record (per Nick Anthony, former LCB Aide). Nothing, thus far, has resulted in any positive change.

The American Bar Association along with the National Center for State Courts have published materials which show that the federal ADA must be complied with by all municipalities (**Exhibit 66**). Because ADA accommodations are a ministerial function and not a judicial function, judges who fail to adhere to ADA accommodations are without immunity from lawsuit. It is our experience that many judges do not comply with ADA, and feel falsely secure in the general "absolute" immunity stance that they, themselves, have created as doctrine. However, it still requires the need for the abused litigant to appear before another judge, who likely is biased in favor of protecting judges.

An example of this type of abuse is revealed here. An experience with now Nevada Supreme Court Judge Parraguirre resulted in federal suit when he denied this litigant's right to audio-visual taping due to a disabling condition. When suit was filed in federal court, he recused from the underlying case. However, in the idea that judges protect judges, a later hearing before now Nevada Supreme Court Judge Saitta, in which the disabled litigant was unable to appear for a single court hearing due to disability symptoms, even when having noticed the court by fax that day, Judge Saitta closed the case - "terminating sanction". Because terminating sanctions are the ultimate punishment, they are a violation of due process when improperly applied (**Exhibit 67**, legal authority regarding terminating sanctions). This is a situation in which clearly, one judge (Saitta) attempted to punish a non-represented litigant for asserting legal rights before another judge (Parraguirre). It represents a lack of judicial education, a lack of neutrality, and absolute injustice. An in-depth review of Nevada cases would, we firmly believe, reveal an absolute pattern and practice of ruling not based on law or evidence, but rather on whether or not a judge likes the litigant.

Judges do abuse discretion. We are in possession of a 9<sup>th</sup> circuit court opinion in which federal Judge Philip Pro was determined to have abused his judicial discretion. It did not result in any punishment for the judge, however. When the litigant had to go before the same judge after the findings were made, he had all reason to be considered about judicial retaliation.

Another example of lack of judicial education or knowledge is contained within **Exhibit 68**, a (later-executed) Affidavit regarding now-Supreme Court Judge Nancy Saitta in which she appears to have violated a criminal defendant's right to due process, and laughed about it. This information was secured during an ACR 17 hearing. If a judge doesn't have knowledge of the correct application of law, it is a mistake to reveal that to the public and to memorialize it on the Legislative records, as was done here. For the citizens to promote her to a higher position makes no sense at all.

We have, in this country, an adversarial system (**Exhibit 69**). It doesn't work. We need a "justice first" system. In an adversarial system, litigants are rewarded for bad behavior

(perjury, false reporting, withholding exculpatory evidence). The only winners are the lawyers, who are able to keep cases going (literally, for years) incurring massive legal costs.

Las Vegas Sun, 3-21-97, "Judges limit Family Court order's clout", regarding temporary protection orders and misapplications, Exhibit 70.

### Judicial Immunity

"Immunity applies even when the judge is accused of acting maliciously and corruptly." (*Harlow v. Fitzgerald*, 457 U.S. 800, 816-819 (1982); *Pierson v. Ray*, 386 U.S., at 554; *Mireles v. Waco*, 502 U.S. 9, 9-10, 112 S. Ct. 286,287, 116 L.Ed.2d9 (1991)). This should be bone-chilling to every citizen. Judges should only rightly have immunity when acting squarely within their capacity. They should be open to litigation on multiple grounds, which the Legislators could codify on behalf of Nevada citizens:

1. ruling outside their jurisdiction;
2. violating civil rights (including the Americans with Disabilities Act), as they are completely without authority to set aside civil rights protections;
3. criminal or otherwise unlawful acts;
4. abuse of discretion;
5. misstatements of facts;
6. failure to recuse or disqualify themselves properly;
7. application of unjust sanctions.

It is for this unlawful doctrine of immunity, and the discovery of it by the citizens served by the judiciary, that a nationwide effort to create special grand juries over judicial misconduct complaints has been created. Judges, by granting themselves immunity, have violated the separation of powers doctrine found in our Constitution. In acting in this status of unlawfulness, it is an easy step forward to other unlawful acts.

It is our position that the current dissatisfaction with the judiciary is valid and well-reasoned. The terms "vexatious litigant", "disgruntled litigant", "conspiracy theorist" - are all well known to those of us in legal reform. We discount then as being what they are, attempts to protect a grossly errant justice system from being repaired. Judges, being public servants, when acting against the citizens they serve - do not aid society's well-being. Far too often, judges bring contempt upon themselves.

In March of 2006, a KNPR radio program with a panel including myself, legal reform attorney Gary Zerman, legal reform activist Bill Steigmier and former State Bar of Nevada head Vince Consul, appeared. The topic was citizen grand juries over judicial complaints. We have a copy of the program. It did not go well for the State Bar and, as a result, the April 2006 copy of the Nevada Lawyer Magazine included two pages on JAIL4Judges (an acronym, "Judicial Accountability Initiative Law") and Redress, Inc. We did not see any positive result from this program with regard to accountability although we heard defensiveness from the State Bar, who followed up in April of 2006 by publishing a two-page article against JAIL4Judges with a sidebar against Redress, Inc.

In 2004, a TV program was aired by Glen Meek (then of Channel 3), called, "The Case Against Lawyers". Before the program aired, we gave him a copy of Catherine Crier's book, "The Case Against Lawyers". Glen Meek had discovered that Nevada was #2 in the nation for lawyer complaints. We have a copy of the program and it is being posted on a web site for easy access.

We did not see any positive result from this program with regard to accountability.

Attached as **Exhibit 71** is legal reform attorney Gary Zerman's response to American Bar Association President, Robert J. Grey, Jr., with regard to judicial immunity and the tired maxim, "judges deserve our respect, not our scorn". It contains well-reasoned arguments against the unlawful doctrine of absolute judicial immunity.

Attached as **Exhibit 72** is Mr. Zerman's Questions on Judicial Immunity posed by Attorney Gary Zerman.

The concept that citizens are not allowed to hold our public officials truly responsible for bad acts, goes against the grain of the history of this country. Also attached as **Exhibit 73** is a notarized statement of Norma Batt with regard to the Idaho Attorney General's statement that judicial immunity is unconstitutional (something which is rarely admitted to by a public official).

That judges do not have complete immunity is illustrated in the attached Kerville Daily Times, 4-29-05, "Judges worry about liability", **Exhibit 74**.

A further illustration is **Exhibit 75**, the Los Angeles Daily Journal's 5-15-97 article, "Immunity Still Not Absolute, Judges Lament".

Yet another is the LA Daily Journal, 3-30-92, "Taking the Hard Knocks of Judicial Immunity, **Exhibit 76**.

An overview of the judicial immunity concept is covered in **Exhibit 77**, "Immunity Broken," by attorney Demosthenes Lorandos, Ph.D.

However, any attempt to hold judges accountable results in:

-- Going before another judge to review the matter, where it is clear that a conflict of interest then occurs, if it could be done at all. **Exhibit 78** is a Petition for Writ of Certiorari by Nevada attorney James Wray asking for the right to sue judges (in this case the Nevada Supreme Court, for intentional judicial misstatements of fact which cannot be corrected and will not be admitted to), which was denied hearing by the U.S. Supreme Court. In legal reform, we often say that judges protect judges. **Exhibit 78a** shows two suggested letters of support to the U.S. Supreme Court encouraging the granting of the hearing of this Writ, which was submitted by legal reform activists nationwide.

The matter was well discussed by Law Professor Anthony D'Amato in his treatise, "The Ultimate Injustice: When a Court Misstates the Facts", 11 Cardozo Law Review 1313 (1990), **Exhibit 78b**.

-- Judges can create the very scenario complained of through the use of misstatements of fact - in fact creating contempt for themselves and completely decimating justice. (Again **Exhibit 78**.) Nevada Attorney James Wray, Petition for Writ of Certiorari to the U.S. Supreme Court seeking a decision to allow citizens harmed by judicial corruption to sue under U.S.C. 1983 Civil Rights Act, went unheard.

-- Conflicts of interest exist behind the scenes; proposed legislation to force LLC's to expose their directors may well reveal cases whereby judges ruled on matters which

mandate recusal, but failed to disclose (that this type of behavior exists, please see attachment, Salon.com, 1-23-06, "Bush nominee broke law," - a federal judge nominated to the U.S. Circuit Court owned stock in corporations involved in lawsuits brought before him). Conflicts of interest result in loss of judicial neutrality, a basic tenet under American law; see section on Judicial Demeanor. That it happens is illustrated in **Exhibit 79**, Salon.com, 5-12-06 article, "Controversial Bush judge broke ethics law". Our position is that he did far more than that - he negated the all-important concept of judicial neutrality making him clearly unfit for judicial office.

See attached: 11<sup>TH</sup> Circuit Court, 12-19-05, Mordkofsky v. Guido Calabresi (Judge); contains absolute immunity citations based on case law, and without any citations to constitutional law - example of the circular reasoning of the judges on the topic, **Exhibit 80**.

#### Suing Judges:

See also, section "Judicial Immunity".

Suing Judges: History and Theory, by Jay Feinman and Roy Cohen, published 31 SCLR 201 (1980), **Exhibit 81**.

Cato.org, "Judicial Immunity vs. Due Process: When should a judge be subject to suit?" by Robert Craig Waters, **Exhibit 82**.

#### Suing Prosecutors:

Brigham Young University Law Review, 1-05, "Reconsidering Absolute Prosecutorial Immunity", **Exhibit 83**.

### Judicial Secrecy

#### Sealed Cases:

A recent series of articles by the Las Vegas Review-Journal show that the issue of sealing cases has become excessively problematic, and defeats the concept in our Nevada Constitution that the courts are an open forum as clearly stated in the Nevada Constitution. Especially in sealed cases, we are not allowed to court-watch, and we have reason to believe that some of the worst judicial abuses take place in sealed cases. See Las Vegas Review-Journal article of 3-2-07, "Lawmakers weigh legislation against sealing of lawsuits" (**Exhibit 83a**), and Las Vegas Review-Journal article of 2-25-07, "Lawyers disagree that court approved secrecy" (**Exhibit 83b**).

The federal judiciary, as of 1-07, is no longer allowed to issue unpublished opinions (**Exhibit 84**). A recent search of cases in Nevada indicates a huge number of sealed cases, many family law and workman's compensation. If this was challenged by the Legislature, likely the same arguments will be made in Nevada as were made against the new mandate to publish all opinions by the federal system. They are not valid. Some of the reasons that Redress, Inc. feels that unpublished, no-cite rules are a blight on society are contained within **Exhibit 85**, May 2005, Response to Judge Walker advocating for unpublsh no-cite rules, which was submitted to the New York Times.

A Courier-journal article of 12-18-05, "Closed courts hide crimes from public" explains

the possibility of harm to society for sealing cases without justification (**Exhibit 86**).

The issue was also addressed by the Seattle Times, 3-5-06, "Inside the Times: Our battle against secrecy in county's legal system" (**Exhibit 88**) and again on 3-5-06, "Your Courts, Their Secrets - The cases your judges are hiding from you" **Exhibit 87** along with links to related articles on judicial secrecy.

#### Judicial Bribery:

Judges can take bribes as did our County Commissioners, as did Judge Garson of New York. The average citizen has no real knowledge of the finances of our State judges. Bizarre case outcomes may lead to speculation about payoffs. That it does happen is illustrated in the New York Times, 8-19-04, "Played in Court, Tapes Show Judge Coaching Lawyer and Taking Case", **Exhibit 89** - how many families were destroyed before this judge was caught? The lawyer surrendered his law license when caught and agreed never to practice law again and also agreed to testify against the judge. Are Nevada judges taking bribes?

#### Cameras (Audiovisual taping):

USA Today printed a statement by U.S. Rep. Ted Poe, R-Texas, Washington, in which he was quoted:

"During my 22 years as a criminal court judge, I was one of the first judges in Texas to not only allow filming of court proceedings, but to also allow the entire trial of a capital murder case to be successfully aired on Court TV ("Let public see justice at work").

"Our sense of justice says the more open and public a trial, the more likely justice will occur. I found that cameras only enhance this concept. I have recently filed legislation that would allow cameras to be present in the U.S. Supreme Court. Courts can prevent the filming of jurors, child witnesses and assault victims, while letting the community see a public trial. Because of the impact Supreme Court rulings have on all Americans those proceedings, especially, should be filmed. These hearings are open to the public, but not everyone has the opportunity to come to Washington to view them. The time has come for cameras in federal courts."

In Nevada, however, as was recently reported in the Las Vegas Review-Journal, some judges are actually shutting off the audiovisual taping. Audio tapes are easier to tamper with without auditory detection and court reporters can falsify transcripts. Judge Donald Mosley was cited as one of the judges making this choice. It should be codified that judges must maintain audiovisual taping at all times. If their behavior is judicious, they should not fear this process.

U.S. Senate Bill 344 has been discussed with regard to cameras in all courts, not just the U.S. Supreme Court. Justice Kennedy testified that he did not want it because it would affect the way the judges behaved.

USA Today, Editorial/Opinion of 12-7-05, "Let public see justice at work", speaks grandly to the issue (**Exhibit 90**).

Las Vegas Sun, 1-2-07, Editorial - "A new court policy? - In a welcome move, U.S. Supreme Court justices take on a larger public presence", **Exhibit 91**.

"Norwich Bulletin, 6-10-06, "Our View: Courts must be more open - Public has right to access, accountability", **Exhibit 92**.

#### Court-watching:

The Redress, Inc., published paper, "Court-Watching, A Crucial Step Towards Justice" is included as **Exhibit 93**. In another portion of this document is more reference to the absolute need for trained court-watchers.

As noted also in this document is the matter of the SNDVTF and the shutting down of the court-watch aspect in Clark County's family court by Hearing Master Frank Sullivan, then head of the Southern Nevada Domestic Violence Task Force, prior to the last election.

#### Judicial (& Attorney) Complaints Secrecy:

Unlawful practice: Nevada Commission on Judicial Discipline Form: See "Obligation to Maintain Confidentiality" with a penalty of \$500 and 25 days in jail which effectively criminalizes free speech (a constitutionally inviolable right), **Exhibit 94**. If the judges and the Judicial Discipline Commission wish to impose this penalty upon themselves, they are free to do so. It does not and cannot apply to the citizenry.

The Las Vegas Review Journal, on 11-24-02, "Judicial gag orders - Complainants shouldn't be sworn to secrecy", reveals the process in Nevada, **Exhibit 95**. The Legislature could codify for an open complaint system and against penalties.

The Legislature can do more for the legal consumers by mandating the creation and maintenance of a user-friendly web site containing a database of cases overturned, judges names attached, judges who abuse discretion or authority, rule outside jurisdiction. The Judicial Discipline Commission records could be included, but with identifying information, and without protecting judicial identities.

Nevada could duplicate New Jersey; Star-Ledger article, 10-20-05, "Justices remove 'gag orders' on lawyer ethics complaints (**Exhibit 95a**)". This would result in the citizenry's ability to fairly, for the first time, evaluate lawyer competence for judicial seats. However, unless the State Bar fairly reviews and adjudicates complaints, nothing would change.

See also, [www.dailyrecord.com](http://www.dailyrecord.com), "The state Supreme Court peeled off a layer of secrecy", **Exhibit 96**.

The Los Angeles Daily Journal, on 1-28-94 published, "Bar is Urged to Make Public Complaints About Lawyers"; this is not a new concept, but one that is staunchly resisted by the legal field, **Exhibit 97**.

WTAP.com published in 2004, "Lawyers Records go on-line", whereby Ohio is putting lawyers' discipline records out to the public. Nevada needs to duplicate this effort. **Exhibit 98**.

A number of web sites have been established across the country for litigants to evaluate judges (Robeprobe.com, Hall of Shame, and Lawdragon among them). Reuters, in 3-4-06, published "Lawdragon Web site will lift veil on judges" (Exhibit 99).

Recent Las Vegas Review Journal articles show a federal indictment regarding a doctor-lawyer scam, which of course constitute secretive behaviors contrary to the public good:

**Exhibit 99a**, 5-3-07, "Federal Indictment: Doctor-lawyer scam alleged".

**Exhibit 99b**, 3-6-07, "Official: Greed is impetus for fraud".

**Exhibit 99c**, 3-8.-07, "Simple human pain at core of complex doctor-lawyer conspiracy charges"

### **LEGAL SYSTEM IS BROKEN:**

Multiple media articles and treatises from authoritative sources declare this. A mere sampling is attached:

1. Associated Press Article, 9-3-04, "Lawyers Puzzled by Decline in Jury Trials" (Exhibit 100) - Explains that the lack of jury trials translates to justice lost. Statistics in hand indicate that in only .05% of the cases are there trials in criminal matters. In less than 2% of all cases are there trials. The system has disintegrated into the common stance, "my lawyer can beat up your lawyer"; of course, as already stated in this document, the one who cannot afford the lawyer also cannot afford to obtain justice in any way.
2. The Legislature could establish a law similar to that passed in Illinois, which mandates that all police interrogations be video-taped. This was done after Illinois imposed a moratorium on death penalty, having found 13 criminal cases to be completely false based on DNA testing. It was also in Illinois that the "Greyford scandal" occurred, in which 78 court employees were charged with corruption and 14 judges were sent to prison.
3. The Las Vegas Review-Journal on 3-5-07, published, "Probe finds uneven justice - 'Contract Attorney' system to be subject of committee inquiry, Exhibit 101.
4. Los Angeles Times, 7-26-06, "Panel Seeks to Curb False Confessions", Exhibit 102.
5. North County Gazette, 7-8-06, Editorial - "A Broken System", Exhibit 103.
6. Congressional Record, nationally-known attorney Alan Dershowitz on rampant perjury in courts and lack of accountability for perjury (a felony which is rarely punished)), Exhibit 104.
7. LewRockwell.com published "America's Injustice System is Criminal", Exhibit 105.
8. Reno Gazette-Journal, 8-13-06, "On trial: Family Courts", Exhibit 106.
9. Article, "A Former Law Clerk Who No Longer Trusts Judges"; response to American Bar Association President published statement that Americans should give judges the "honor and respect" they deserve (Exhibit 107).

10. The 2-07 Communique' (Clark County Bar Association) published "Making the Criminal Justice System Whole: Nevada Supreme Court Review of Criminal Sentences", **Exhibit 108**.
  11. See Victims of Law web site at <http://victimsoflaw.net/>, with its extensive collection of articles on judicial and attorney misconduct (nationwide database), **Exhibit 109**.
  12. Las Vegas Review Journal, 4-17-05, by Thomas Sewell at Stanford University, "The slippery slope toward judicial rule", **Exhibit 110**.
  13. Azcentral.com, 3-27-05, "Law loses its way", **Exhibit 111**.
  14. "America's Injustice System is Criminal," by Paul Craig Roberts, **Exhibit 112**.
  15. Los Angeles Times, 6-24-04, "Justice System is 'Broken,' Lawyers Say", **Exhibit 113**.
  16. American Judicature Society, 4-27-06, "Systemic flaws in our criminal justice system", **Exhibit 113a**.
  17. LA Times, 6-24-04, "Justice System is 'Broken,' Lawyers Say", **Exhibit 114**.
  18. MassNews.com, 3-7-03, "American Legal System is Corrupt Beyond Recognition, Judge Tells Harvard Law School", **Exhibit 115**.
  19. Attorney Gary Zerman on the American Legal System, "The Best in the World or is it a Joke? You Decide." **Exhibit 116**.
  20. LA Times, 11-19-98, "Public Exhibits Little Confidence in Courts", **Exhibit 117**.
  21. Daily Journal, 11-19-98, "LA Courts Told 'Real, Significant' Change Needed", **Exhibit 118**.
  22. LA Times, 9-21-00, "Rampart Hasn't Changed How Criminal Courts Do Business", **Exhibit 119**.
  23. Transcript of citizens reporting on court dysfunction to Nevada Legislature, Senate Committee on the Judiciary (Half-way through enters Redress, Inc. testimony; however for accuracy review DVD on file at Legislature), **Exhibit 120**.
  24. National Report on Exonerations in the U.S. may be found on-line at:  
[http://www.soros.org/initiatives/justice/articles\\_publications/publications/exonerations\\_20040419/exon\\_report.pdf](http://www.soros.org/initiatives/justice/articles_publications/publications/exonerations_20040419/exon_report.pdf)
- Every exoneration involves a false arrest and prosecution; legal reformers are certain that completely innocent people have paid the ultimate price (death penalty) while being innocent which exaggerates the travesty against citizens. While an innocent person is incarcerated, the guilty are free to roam and to continue preying upon society.
25. Judge Andrew P. Napolitano's book, "Constitutional Chaos - What happens when the government breaks its own laws" has summarized the problem of accountability, in government and in the judiciary (ISBN 0-7852-6038-8).

26. The Judiciary, as Described by U.S. Senator John Cornyn, 4-05, **Exhibit 121.**
27. Rocky Mountain News, 12-7-05, "State high court judge, lawyer plan institute" - Studying problems in the legal system and finding ways to fix them, **Exhibit 122.**
28. Las Vegas Sun, 6-9-06, "Jon Ralston on the embarrassing state of Nevada's Judicial System", **Exhibit 123.**
29. Las Vegas Sun, 6-17-06, "Jaded Justice", **Exhibit 124.**
30. LA Times, 6-25-06, "Inquiry Sought into Vegas Jurist", **Exhibit 125.**
31. La Times, 6-8-06, "Juice vs. Justice - In Las Vegas, They're Playing with a Stacked Judicial Deck", **Exhibit 126.**
32. Las Vegas Review Journal, 6-18-06, "Fast and Loose: Scratching Backs", **Exhibit 127.**
33. LA Times, 6-23-06, "Three Las Vegas Judges Face High Court Review, **Exhibit 128** (One of the senior pro tems, Pavlikowsky - who is otherwise mentioned in this report for misconduct - simply quit rather than face investigation. That does not constitute judicial accountability).
34. [Http://vegasblog.latimes.com/vegas/2006/06/one\\_former\\_veg.html](http://vegasblog.latimes.com/vegas/2006/06/one_former_veg.html) - "One former Vegas Judge on "Juice v. Justice", **Exhibit 129.**

## **CONCLUSION**

The legal system in Nevada is completely dysfunctional, and the only way to resolve this issue is to face it head on. It will require a lot of self-scrutiny by lawyers, judges, and our Legislature. The way to repair a broken system is step-by-step.

The Nevada Plan cannot solve the problem; it is a derivation of the Missouri Plan, which has failed. Missouri Court Reform, a legal reform group headed by a lawyer and his wife, indicate that clearly the selection of judges is a failure. Besides, citizens want to retain the right to elect judges.

The Legislator could fairly consider the option of Sortition (**Exhibit 130**). While it is not currently in place anywhere in the United States, and while Nevada is not number one for the good factors of society (as was recently testified to by Nevada authorities at the Assembly Select Committee on Corrections, Parole and Probation, it would likely diminish the cronyism that results from the current system which has been well exposed. It would save taxpayer dollars. A bad judge could only harm a few people per year rather than thousands. Sortition as a judicial selection method has merit.

The Legislators could become fully aware of all the factors resulting in a broken judiciary, many of which are contained within this report.

The Legislators could take information on the matter NOT from the broken system itself, but from the activists who are devoting their time, money and energy to the resolution of this all-important matter. Our Legislators can assist in the repair of the judiciary by taking action against judicial activism:

1. Legislators could have taken action against the Nevada Supreme Court when they wrongly

decided that there were grounds to set aside an initiative ratified by the Nevada citizens. The Court, last fall, on its' own volition, did set aside their earlier decision shortly before elections. This action did not save Supreme Court Judge Nancy Becker, and she lost her seat. It was then the duty of the Legislature to exercise its checks and balances to maintain integrity of the Nevada Constitution.

2. Nevada Supreme Court regarding *Cheung v. District Court*, 121 Nev. Adv. Op. No. 83 (2005) where again, the Supreme Court in a majority decision, decided to modify the Nevada Constitution. Justice Maupin's dissent:

"I join Justice Rose in his dissent. I write separately to address a comment made by the Chief Justice in her separate concurrence with the majority. The concurrence concludes that the framers of the Nevada Constitution did not intend to grant jury trials in small claims cases. That is so. The Legislature did not create the small claims division of justice courts until over one-half century following statehood. The framers must be forgiven for such a lack of prescience. But as stated in *Aftercare of Clark County v. Justice Court*, the framers clearly intended to hold the right to jury trial inviolate in justice court matters involving claims for money damages. And because small claims actions are justice court actions, tried by justices of the peace, such actions are subject to this constitutional right. Yes, small claims court did not exist at statehood. The subsequent creation of small claims courts as a division of justice courts cannot circumvent the Constitution.

"Only the people of this state may change the Nevada Constitution. The majority today has usurped this critical prerogative."

This was covered in depth at <http://www.rppi.org/nevadabudgetmess.html>. State law must conform to federal constitutional provisions. For those with traffic concerns or those faced merely with misdemeanors, our courts have taken the stand that the right to an attorney is not a right at all. For those charged with direct contempt (whether fairly or not), no trial is given. When the U.S. Constitution can be set aside at the whim of a majority of judges, there is no more use for the U.S. Constitution.

The Legislature has a duty to act to correct these concerns.

Our Legislators can assist by codifying the grounds under which a judge has immunity, and publishing those results. Public education is key.

While Redress, Inc. agrees that the issue of campaign contributions helps to pollute the legal climate and lead to a public perception of buying judges, we are well aware that judicial elections have been in place in Nevada from the beginning. Had the judges stayed within the confines of their duties, they would not have brought upon themselves ill-repute and campaign contributions may never have become an issue at all.

That issue can be resolved by the institution of the Secretary of State general election fund for judges, already explained above. It too, is not in use anywhere in the United States, but it also has merit for consideration. We watched while Nevada explored the idea of limiting or eliminating judicial fund-raising, and were not surprised that the final decision came to be negative, a violation of judicial constitutional rights. It does not mean that battle is over. Idahoans for Fair Elections has addressed the issue. It is worth exploring.

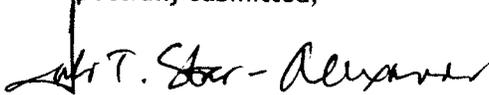
Neither would we support a judicial bump in pay; we have no shortage of applicants for judicial appointments nor a shortage of lawyers running for election. The theory that we can “buy” better judges by paying them more is without merit. Generally, truly effective lawyers will always earn more income than judges. Lawyers must want to become judges for other reasons, such as a consistent rate of pay, paid benefits, etc.

The term “judicial independence” comes to be a thorn in the side of legal reformers. We would rather see the term “judicial impartiality”. Restructuring the legal system would not affect judicial decisions which must remain free from attack unless they are constitutional violations of law as stated above, at which point they must absolutely be attacked from the highest levels.

Citizens no longer trust lawyers or judges, nor can they afford to pay lawyers. There are too many lawyers, and the quality is not good. In order to restore public confidence in the legal system, “heads must roll - illustratively speaking, of course”; the discipline commissions must be completely revamped and become fully open to the public. Citizens must be on those commissions at a rate higher than lawyers and judges. We find it ironic that we can sit on juries and decide whether another person will live or die but we are not bright enough to decision lawyer and judge misconduct cases.

SJR-2 is a canard, it misleads, it misrepresents, it is ineffective, and it must not pass.

Respectfully submitted,



Juli T. Star-Alexander

cc: Media (Including LA Times)  
Article 6 Commission  
NCPE Mailing List  
ACLU, Lee Rowland, JD [rowland@aclunv.org](mailto:rowland@aclunv.org)  
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Legal Reform Advocates

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session  
April 11, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9:10 a.m. on Wednesday, April 11, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Mark E. Amodei, Chair  
Senator Maurice E. Washington, Vice Chair  
Senator Mike McGinness  
Senator Dennis Nolan  
Senator Valerie Wiener  
Senator Terry Care  
Senator Steven A. Horsford

**GUEST LEGISLATORS PRESENT:**

Senator Dina Titus, Clark County Senatorial District No. 7

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Brad Wilkinson, Chief Deputy Legislative Counsel  
Gale Maynard, Committee Secretary

**OTHERS PRESENT:**

Tim Crowley, The Nevada Subcontractors Association  
Bruce King, The Nevada Subcontractors Association  
Keith L. Lee, State Contractors' Board  
David F. Brown, State Contractors' Board  
Scott Canepa, Nevada Trial Lawyers Association  
Robin Vircsik  
Randy Robison, City of Mesquite

Senate Committee on Judiciary  
April 11, 2007  
Page 20

CHAIR AMODEI:

We will move to Senate Joint Resolution (S.J.R.) 2.

**SENATE JOINT RESOLUTION 2**: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)

If this passes, it sets in motion a process that would go to a vote of the people for a constitutional amendment in 2007 and 2009.

Is there any informal discussion amongst Committee members? If not, what is the pleasure of the Committee on S.J.R. 2?

SENATOR NOLAN MOVED TO DO PASS S.J.R. 2.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS AMODEI, McGINNESS AND WASHINGTON VOTED NO.)

\* \* \* \* \*

## DISCLAIMER

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Contact the Library at (775) 684-6827 or [library@lcb.state.nv.us](mailto:library@lcb.state.nv.us).



# WORK SESSION

## Senate Judiciary

April 11, 2007

PREPARED BY  
**RESEARCH DIVISION**  
LEGISLATIVE COUNSEL BUREAU  
Nonpartisan Staff of the Nevada State Legislature

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### Bills Under Consideration

- Senate Bill 212 \_\_\_\_\_ pp. 2-4
- Senate Bill 216 \_\_\_\_\_ pp. 5-13
- Senate Bill 299 \_\_\_\_\_ pp. 14-18
- Senate Bill 302 \_\_\_\_\_ pp. 19-21
- Senate Bill 354 \_\_\_\_\_ pp. 22-24
- Senate Bill 378 \_\_\_\_\_ p. 25
- Senate Bill 380 \_\_\_\_\_ pp. 26-42
- Senate Bill 483 \_\_\_\_\_ pp. 43-53
- Senate Joint Resolution 2 \_\_\_\_\_ p. 54

Committee Action:  
Do Pass \_\_\_\_\_  
Amend & Do Pass \_\_\_\_\_  
Other \_\_\_\_\_

This measure may be considered for action during today's work session.  
(April 10, 2007)

**SENATE JOINT RESOLUTION 2** — *Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)*

**Sponsored by:** Senators Raggio, Hardy, Care, Coffin, Carlton, et al.  
**Date Heard:** March 8, 2007, Senate Judiciary – no action  
**Fiscal Impact:** **Effect on Local Government:** No  
**Effect on the State:** No  
**Exempt:** No

Senate Joint Resolution 2 proposes to amend the *Nevada Constitution* to provide for the appointment of judges, followed by a retention election by the voters in Nevada. Initial appointment would occur by appointment by the Governor from candidates chosen by the Commission on Judicial Selection. Upon declaration of a judge's candidacy for a retention election, he must undergo a review of his performance by the Commission on Judicial Performance, which makes a public report prior to the retention election. If 60 percent of the votes cast are in favor of retention, the judge will then serve a six-year term and must run in another retention election at the end of each six-year term. If he does not declare his candidacy or gets less than 60 percent of the votes cast, a vacancy is created that is filled by appointment.

**Testimony:** Proponents explained that the process outlined in the resolution would provide for an independent judiciary, allowing judges to devote a greater degree of his time to judicial service, and less time to seeking necessary campaign contributions. It will also encourage qualified people to apply who might otherwise be hesitant to run for office or submit themselves to those who want to persuade a judge's opinion through monetary contributions.

Opponents argued that this process eliminates the public's opportunity to vote for its judges and will create a system without proper scrutiny.

**Amendments:** It was suggested that the resolution may need to be amended so that the performance report is made available to the public prior to the commencement of early voting.

**Options:**

1. Amend and Do Pass with an amendment concerning early voting.
2. Do Pass
3. No Action
4. Indefinitely Postpone
5. Other Action

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session  
May 1, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:12 a.m., on Tuesday, May 1, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Assemblyman William Horne, Vice Chairman  
Assemblywoman Francis Allen  
Assemblyman John C. Carpenter  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Susan Gerhardt  
Assemblyman Ed Goedhart  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman Harry Mortenson  
Assemblyman John Ocegüera  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**GUEST LEGISLATORS PRESENT:**

Senator William Raggio, Washoe County Senatorial District No. 3  
Senator John Lee, Clark County Senatorial District No.1

Minutes ID: 1131



**STAFF MEMBERS PRESENT:**

Jennifer M. Chisel, Committee Policy Analyst  
Risa Lang, Committee Counsel  
Doreen Avila, Committee Secretary  
Matt Mowbray, Committee Assistant

**OTHERS PRESENT:**

Rew Goodenow, President, State Bar of Nevada, Reno  
Bridget Robb Peck, Board of Governors, State Bar of Nevada, Reno  
Bruce Beesly, Vice President, State Bar of Nevada, Reno  
Robert Payant, Retired Judge, Reno  
Richard Morgan, Private Citizen, Las Vegas, Nevada  
Alecia Biddison, Managing Partner, The Busick Group, Reno  
Tonja Brown, Private Citizen, Carson City, Nevada  
Patty Pruet, Private Citizen, Dayton, Nevada  
Sherry Powell, Representative, Ladies of Liberty, Carson City  
Cam Ferenbach, Board of Governors, State Bar of Nevada, Reno  
John Wagner, Representative, the Burke Consortium, Carson City  
Warren Russell, County Commissioner, Elko  
Lynn Chapman, Vice President, Nevada Eagle Forum, Sparks  
Janine Hansen, Representative, Independent American Party, Elko  
Sharron Angle, Private Citizen, Reno, Nevada  
Keith Lee, Counselor, Sutton Place Limited, Reno, Nevada  
Lewis Shupe, Private Citizen, Las Vegas, Nevada  
Douglas E. Smith, Chief Judge, Justice Court, Las Vegas Township  
Michael Bell, Manager, Judicial Education Division, Administration Office  
of the Courts, Carson City  
Kimberly J. McDonald, State Legislative Affairs Officer, City Manager's  
Office, North Las Vegas

**Chairman Anderson:**

[Meeting called to order. Roll called.] We are going to hear the bills out of order today. We are going to start with Senate Joint Resolution 2.

**Senate Joint Resolution 2: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C177)**

**Senator William Raggio, Washoe County Senatorial District No. 3:**

I am pleased to appear today as a sponsor for S.J.R. 2, which is a version of what is normally called the "Missouri Plan." This involves the initial selection of

judges. I have had some requests from members of the Assembly who are supportive of this measure. They have indicated that they would like to be named as co-sponsors. If any Assemblymen and Assemblywomen would like their name added as a sponsor, I will gladly welcome them. I also have distributed copies of my testimony and related materials (Exhibit C) to which I will refer.

I am a member of the State Bar of Nevada and have been an attorney since 1952, a legal career in excess of 50 years. For 18 years I served as a prosecutor, and I have been active on both the criminal and the civil side of law. Coming from that experience, I can tell you that my thoughts on how judges are selected and how vacancies are filled probably have changed over the years. In my experience, the judges who have been appointed are more qualified than judges who are initially elected. Please do not take that the wrong way because we have good judges, both elected and appointed. Let me remind the Committee and some of the public who do not realize it, we already have in the *Nevada State Constitution* a commission that is utilized for the filling of vacancies in either the Supreme Court or District Court.

Senate Joint Resolution 2 proposes to amend the *Nevada State Constitution* to provide for the initial appointment by the Governor of justices of the Supreme Court and judges of the District Court. This bill would also cover, if we were to establish an intermediate appeals court, judges who would serve in that court. This bill is a real improvement over previous versions of the "Missouri Plan", which has been considered and passed by two successive legislative sessions, then placed on the ballot. After the initial appointment, if a justice or judge wishes to serve another term, he or she must make a declaration of candidacy for a retention election. If 60 percent or more of the votes cast are in favor of the retention of the justice or judge, he or she will then serve a six-year term and must run in a retention election if another six-year term is desired. Nevada presently has six-year terms, so that is not a change. The change is that instead of running in a competitive election, where anybody can go in and file, it would be a retention election to determine whether or not the judge should be retained. If the justice or judge does not make a declaration of candidacy for a retention election, or if that justice or judge receives less than 60 percent of the votes cast in favor of retention, then a vacancy is created at the end of the term, which must be filled by appointment by the Governor. I have had some question as to why it is necessary for 60 percent—why not just make it a majority? If a judge or a justice running in a retention election without opposition and based upon a record and review of that judge's performance cannot receive 60 percent of the vote, then I would say that there is a serious concern about whether that judge is qualified to be retained. I am not going to

argue about that, but 60 percent when you are not running against a live body is a decent measure.

Senate Joint Resolution 2 also requires each justice or judge who has made a declaration of candidacy for a retention election to undergo a review of his or her performance. This resolution creates the Commission on Judicial Performance and requires the Commission to perform such review. The review of each justice or judge—a new provision in this process—is required to consist of a review of the record of the justice or judge and at least one interview by the Commission. At the conclusion of this review, the Commission is required to prepare and release to the public a report containing information about the review and its recommendation on the question of whether the justice or judge should be retained.

I have proposed this amendment of the *Nevada State Constitution* because too often judicial elections become embroiled in politics. Unlike the rest of us, people who are running for judge and justice are supposed to be unbiased. They are supposed to be able to look at any issue that comes before them with fairness—not as a Democrat, Republican, or Independent. This appointment system with retention elections would remove judges from partisan politics and would free judges from the necessity of soliciting political contributions from attorneys, law firms, litigants and potential litigants—the usual source of financial contributions in judicial elections. In that situation and particularly where we want the perception of judges to be impartial and not obligated, it is a rather demeaning process for judges of the Supreme Court or the District Court to be sitting in law offices of litigants or potential litigants with their hat in hand waiting to ask for money.

The District of Columbia and 23 states, which are among the most progressive in judicial reform, have adopted a nominating commission plan for appointing judges to an initial term on the bench. Fifteen of those states also hold retention elections at the expiration of judges' terms. The resolution before you was designed to pick up the best aspects of all those plans that are in effect in determining judicial elections and selection in filling vacancies. The people of Nevada have already approved an amendment to the *Nevada State Constitution* which provides for a Judicial Selection Commission to make recommendations for filling vacancies at the Supreme Court and District Court levels. That has worked well over the years. It is that Commission that is supposed to make nominations for the initial appointments by the Governor.

Senate Joint Resolution 2 contains the best features of all of the merit selection plans. Similar proposals have been before this Body in past years and were defeated by voters, but S.J.R. 2 is a vast improvement over some of the others.

The events which have occurred since these measures were considered fully justify that this issue be submitted to the people of this State for further consideration. For those who are concerned that this measure is going to take away a right of voters, let us remind ourselves that we have to pass the bill in two legislative sessions. The bill will then go on the ballot where the people will have the right—as they did before when they established the other commission to fill vacancies—to vote on whether it is needed.

In the material before you (Exhibit C), reference is made to articles in the *Los Angeles Times* about the judicial process and the so-called taint on the judiciary in Las Vegas. The *Times'* investigative series, "*Juice vs. Justice*" stated that "in Las Vegas, they are playing with a stacked judicial deck. Some judges routinely rule in cases involving friends, former clients, and business associates and favor lawyers who fill their campaign coffers." I do not know whether it is true or false, but these articles certainly brought the issue to the attention of the public and caused a great deal of concern. For that reason, it is time to present to the public the opportunity to determine whether there is a better way to select our judges in our highest courts.

Senate Joint Resolution 2 is intended to ensure, insofar as possible, an independent judiciary. It will enable a judge to devote his or her entire time to the business of the court since the judge will not take part in the usual political campaigns. Certainly they do have to participate in what is termed a retention election. There is a cost to that. The plan ensures that full consideration will be given to the ability, character, and qualifications of a judicial candidate before that person's name is permitted to go on the ballot through this review and recommendation process, and will cause the attention of voters to be focused on a judge's record, making it easier to remove incompetent judges from office and to retain judges whose records are meritorious.

Senate Joint Resolution 2 will encourage well-qualified people to serve on the bench who would not submit themselves to the ordeal of campaigning for the office under the current system or who lack the means of financing such a campaign. I know a lot of qualified attorneys who have said they would not subject themselves to that kind of process. This bill will attract people who would be willing to serve and to go through this appointment process. I believe it is time to give the people of this State an opportunity to ensure a more independent judiciary.

I have also given to the Committee a copy of a recent editorial that appeared in the *Reno Gazette-Journal*, which endorses this resolution. There is also a list of the states where these merit-selection plans are in effect. There is a letter from the State Bar of Nevada which has endorsed this proposal.

I am not sure if anybody else is here to testify on this measure today. I am not sure if any representative from Justice at Stake Campaign is here, but they have put together good materials if any member has an interest in pursuing this issue further.

**Chairman Anderson:**

We will have the testimony of Senator Raggio, dated May 1, 2007, submitted for the record.

**Assemblyman Horne:**

I can see how this might put more qualified judges on the bench, but I question removing the money, giving the appearance of impropriety of attorneys appearing before judges to whom they have given contributions. I envision a retention election in which at the very least a judge is going to have to get his message for retention out to the public. However, if you have a judge who has given an unfavorable ruling for whatever reason, and now there is a group or groups whose mission it is to campaign against retaining that judge, this retention election has become more expensive. That judge is still going to go to the very people who appear before him or her in order to obtain funds to defend his or her election. The bill does not accomplish getting that out of the mix, does it?

**Senator Raggio:**

That is a good question. We have a jury system, it is not perfect, but it is the best system anywhere in the world. The bill being proposed does not create the perfect system either, but it does, as I indicated, take out the fact that a judicial candidate, a judge seeking retention or appointment, is not running against an opponent. There could be some cost involved. However, it is far less than running in a campaign with two or three other candidates involved. I am aware of several instances where judges have faced opposition. Somebody, perhaps a group, has not liked a decision at either the Supreme Court level or the District Court level, and has backed an opposition candidate with a great deal of money. As an attorney, I resent that, and I believe the public, whether lawyer or not, should resent it as well. A judge ought to be able to make a decision without fear or favor. Legislators have term limits; federal judges have lifetime appointments, but to the extent that we have an independent judiciary, a judge should not be concerned about whether he or she will be reelected or retained because of a decision they render. That could happen, but it is less likely in a retention election, and not to the extent it does currently.

**Assemblywoman Allen:**

Two years ago I made a big issue in this Committee about how the process currently works and the potentially compromising way judges seek the bench, so I am glad to see your resolution before us today. The portion I have some concern with is the 60 percent or more of the votes you spoke of earlier. Some of the research I did on this process during the interim on any type of hybrid "Missouri Plan," yielded many scenarios where, as Mr. Horne outlined, a judge made a decision, and it was upsetting to a specific industry. The way we do campaigns now there is a two-week process before the general election where early voting starts and negative attacks happen during this period. A judge may not think that he needs to solicit campaign contributions and have a real active campaign because in the three months prior to the election, there is silence; however, during the last two weeks there are very aggressive attacks. With this 60 percent barrier, if a judge acquires 58 or 59 percent of the vote—probably something of value when one is under such tremendous attacks in those last two weeks of a campaign—is there no way to appeal this process?

**Senator Raggio:**

There is no scientific reason for the 60 percent; it is a value judgment of a number of people and entities that support these kinds of processes who feel that a judge ought to at least be able, in a retention election with a recommendation from a judicial performance commission, to receive 60 percent. If one cannot do that, I would suggest there was something missing with that judge's performance. I guess it could be 55 percent or 75 percent, but 60 percent sounded reasonable and that should not be hard to achieve if one has the review and recommendation from a judicial commission and no opponent. Newspapers in both northern and southern Nevada do polls on judges, and while it is not a mandatory requirement, it is probably persuasive to the public. If a judge in those polls did not attain at least 60 percent, he would probably have trouble getting reelected. A low percentage in the polls would probably be an invitation for candidates to run against him.

**Assemblyman Segerblom:**

Assuming that a judge was running for retention and a group decided to oppose him, would there be any financial limitations if they formed a committee to vote no on that judge, or would there be any financial reporting requirement?

**Senator Raggio:**

I would assume that the reporting requirements in place would also apply to a retention election—that is, the reporting of contributions. A judge would have to report contributions as well as anyone who was running against that judge. I am only giving you an attorney's opinion.

**Assemblyman Segerblom:**

Mr. Conklin, we sent you a proposal to require limitations on spending on referendums, and the like, so if this got to that stage perhaps we could add judges into that process.

**Rew Goodenow, President, State Bar of Nevada:**

I am an attorney. I practice law with Parsons, Behle and Latimer in Reno, and I am here in my capacity as President of the State Bar of Nevada. We are a membership organization to which lawyers in Nevada are required to belong as a requirement precondition to practicing law in this State. We are a quasi-governmental organization that is required to speak on legislative issues only insofar as they might affect the administration of justice.

Senate Joint Resolution 2, in our judgment as the Board of Governors, profoundly affects the administration of justice in Nevada, and so the Board of Governors of the State Bar Association voted to take a position on Senator Raggio's proposal. We support wholeheartedly the proposal as written. Senator Raggio has effectively covered the proposal before you. I would like to add a couple of things that the Senator did not touch on.

First is the intense media attention that has been given in the recent past to the election of judges, not just in Nevada but nationwide. Newspapers on both coasts and in our State have covered the problems that exist with judicial elections. We are not the only state where media attention has focused upon our election system. The State of Ohio, which I often use as an example of why there are problems with the system, has also experienced the same issues that we have with their elective system, if not worse. The problems they are experiencing are coming here. The second point is the reason that I feel the problems have worsened in the recent past, and why Ohio, and soon Nevada, will experience more problems. Further, more public displays of negative advertising will impact the respect for the laws that this Body enacts and their enforcement by our court system. In 2002, the United States Supreme Court decided a case called *The Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), in which the Supreme Court spoke to the question of whether or not judges have free speech rights and the extent to which they have them. In that case, the court decided that judges could not be prevented from speaking their mind on issues, or announcing their views on issues that might come before them. That is a difference that has occurred since the voters last considered this type of a measure in Nevada, and it is one that is of profound significance. If the judge in Nevada—which is the only state in the country in which judges may directly solicit campaign contributions—can at the same time announce his or her view on a particular issue, I think that it does not take long for us to reach the conclusion that that is a very dangerous situation.

In *The Republican Party of Minnesota v. White*, the second important point to be observed in reading it is that each of the Supreme Court Justices wrote in concurring or dissenting opinions. Justice O'Connor, most especially, wrote in her concurring opinion that while she believed that judges enjoyed the ability to speak their minds on issues that might come before them, and that the canons that prevented them from doing so, while they are an attempt to ameliorate the problems with judicial elections, simply are not constitutional. Also, I do not think that judicial elections are a wise public policy; I believe they are an unwise public policy, and I recommend the Missouri system, or some form of the Missouri system, be adopted. That is what is before you and that proposal improves on the system that even Justice O'Connor was looking at.

For those reasons and many others, we believe that now is the time for the State to take action and change our system. I want to note that present with me are Bruce Beesly and Bridget Robb Peck, who are members of the Board of Governors of the State Bar of Nevada. I will be happy to address any questions the Committee may have.

**Vice Chairman Horne:**

This issue seems at least in small part to be in the purview of the State Bar of Nevada and the Supreme Court in dictating how attorneys and judges interact with the contributions made to judges. Have the Nevada State Bar and the Supreme Court collaborated to try to find other ways in which to ameliorate this perception of favoritism for those who give contributions to judicial candidates?

**Rew Goodenow:**

As a State Bar Association, we do promote the adherence to the canons of judicial conduct. As recently as Friday, April 27, 2007, I spoke with the Clark County Bar Association concerning Judicial Elections Canon 5, which addresses the judges' conduct in judicial elections. We have a Judicial Ethics and Election Practices Committee that is charged with addressing questions regarding judicial conduct in elections and complaints regarding that conduct, and disputes between candidates for judicial offices. Unfortunately, and this is the reason that I have described the United States Supreme Court's decision in *The Republican Party of Minnesota v. White* here today, the efforts to prescribe conduct for judges in this process are constrained by the constitutional limitations and simply do not go far enough. Moreover, efforts have been cut back by the Supreme Court's decision, and decisions following it since 2002, to the extent that I do not believe we are able to regulate judicial conduct in a way that effectively addresses the concerns that you see from the numerous news articles and commentators that have talked about the problems in our system.

**Assemblyman Ohrenschall:**

Is there is any polling data that shows that there may be a more favorable outcome this time if the Missouri Plan does go to the voters?

**Rew Goodenow:**

This is a question I am often asked—do you think it will pass this time. I do not know of any polling data at present. However, my anecdotal information, having spoken with numerous reporters and news outlets, is that there is a different attitude now among the media on this particular issue. A number of people within the media believe it is time to address this because of the reasons expressed in the *Los Angeles Times* articles, and the ones I just referred to that were also mentioned in the *New York Times* articles focusing on Ohio. There has also been a great deal of buzz on this subject on several shows in Las Vegas. I think that when we do that polling, you will find that there is more of an appetite among the voters for change.

**Assemblyman Ohrenschall:**

Would the State Bar, or would any attorneys' group, be able to fund a campaign to support this if it went to the voters to try to keep it from going to the third defeat?

**Rew Goodenow:**

Yes. I believe that the State Bar Association is committed to seeing this legislative effort through. I also am aware of private entities that will fund a campaign to support this proposal.

**Assemblyman Carpenter:**

When the names are submitted to the Governor, the way I read this is that if the Governor does not make an appointment, then he cannot make an appointment to any other public office. I do not know what that means. Does that mean that the rest of the State is going to shut down if he needs to appoint somebody to a very important post within the government?

**Rew Goodenow:**

I did notice that. It was my understanding that the way the process would work is that if an appointment was not made from among those recommended, that the Governor could then ask for additional names to be submitted. I am sure that the committee would do that.

It has just been pointed out to me by someone who has been through this process that that is also the way that the system currently works. If the initial proposed candidates are not selected, it then goes back to the committee for further recommendations.

**Assemblyman Carpenter:**

What I am talking about is that part of the bill that says if the Governor has not made the appointment required by subsection 3, he shall make no other appointments to any public office until he has appointed a justice or judge from the list of additional nominees. My concern is that if he cannot make other appointments until he makes the appointment for the judge, that will reverberate through the whole system.

**Rew Goodenow:**

I believe that is similar to the language that we currently have on page 7, and if that is a concern of the Committee, I think there is a way to draft around that without violating the bill. I think that it is simply in there in order to force an appointment, not to be held hostage, and to require that appointments be made in a timely fashion so that we avoid the situation that we see sometimes on the federal level.

**Assemblyman Carpenter:**

It does not happen very often, unless a judge passes on or is removed because he has done something wrong.

**Chairman Anderson:**

Mr. Carpenter, let us turn to the Legal Division for help with the language on this.

**Risa Lang, Committee Counsel:**

I think that the provision they are referring to, which is similar to what is being added, is being removed in subsection 8, where it says that "after the expiration of 30 days from the date on which the Commission on Judicial Selection has delivered to him its list of nominees for any vacancy, if the Governor has not made the appointment required by this Section, he shall make no other appointment to a public office until he has appointed a justice or judge from the list submitted." I think it is similar to what we have currently, but it is being revised to work with this new system.

**Chairman Anderson:**

On page 8, lines 17 through 20, we are moving it from the existing law to make it also applicable in that section. We are not creating new language here.

**Assemblyman Carpenter:**

I know that it is in there now, but as I stated, it does not happen very often. If the Governor had to make an appointment to every judgeship in Nevada, that would be quite a few.

**Rew Goodenow:**

There are two things I would like to mention in response to your question. First, the majority of the replacements in open judicial seats are currently made, by appointment. I am not aware of a circumstance currently where the governor has not selected one of the three nominees that came from the current Commission. I think that you point out a procedural position that is created both in the existing statute and in the proposed statute, which would probably not, as you have observed, under ordinary circumstances come into play. I am not aware of it ever having come into play in the 18 years I have practiced law in this State.

**Risa Lang:**

I am not advocating one way or another, just addressing Mr. Carpenter's concerns. The judges are not going to be selected for initial terms since they are already in office. It would just be current when a vacancy occurs, as it is now.

**Rew Goodenow:**

The proposal is that there would be an initial appointment, then approximately one year later the retention elections begin.

**Chairman Anderson:**

If I am currently seated as a judge and this were to pass the electorate, the appointments would come up, and if my seat were up for appointment, I would be at the pleasure of the Governor?

**Rew Goodenow:**

No. The way I understand it, the judges who are currently sitting as of the effective date of the vote of the people adopting S.J.R. 2 would be required to sit for retention elections. The open seats—those opening after the time period when the statute becomes effective—would then be filled by appointment first under the system that you see here.

**Bridget Robb Peck, Board of Governors, Nevada State Bar Association:**

I am here in a unique position in that last year when Judge Green retired I was appointed by Governor Guinn to fill his seat. I have also run for election, so I have been in both positions, and I think I may be able to enlighten the Committee with regard to those experiences. With regard to the selection panel, having gone through that process, if you know what the composition of that panel is, I cannot think of a more even-handed way to handle this, and it has filled vacancies in the judiciary in a very fine fashion for many years in this State. It is, as Senator Raggio pointed out, something that the electorate thought would be a good idea. The panel is chaired by the Chief Justice of the

Supreme Court of Nevada. It is then filled with a set number each of Republicans and Democrats, so that it cannot be swayed by one political party or another. Half of the panel's composition is filled by the Board of Governors, the other half is appointed by the Governor; again, there is no opportunity for a particular constituency to control that board. There is also a requirement that a certain percentage come from northern Nevada and a certain percentage come from southern Nevada, and that there be representatives from the rural counties as well. That selection panel is about as even-handed and as inclusive as any panel can be. Having been through that process, I can tell you that the application itself is a rigorous process. My completed application ran to about 45 pages. They asked me questions ranging from what my experiences were in law school, as an undergrad, and back to what I did in my high school career. They really take a look at the candidate's academic career, from the time they started to have one. They also asked me about how I functioned as a lawyer. They asked questions about whether I had malpractice suits, whether there had been discipline complaints. Again, this is something that tells about the qualifications of a person. They take a look at the letters of recommendation that come from people in all walks of life; only three can come from judges and other legal colleagues, plus another three letters from people who have known you in some capacity other than professional. There are health questions; I had to tell the panel about all of the physicians I had consulted over the last five years. In short, the selection process does something that an election could never do. They look at the myriad components of a human being and they weigh and balance those things. Finally, there is an interview with the selection panel itself. Because of the rigorous nature of that process, the three candidates that go to the Governor are all going to be people who should be considered. I think that you can have some confidence in the way our judges would be selected in the future and know that we would have qualified judges.

Given what Mr. Goodenow said with regard to the pressures of *The Republican Party of Minnesota v. White*, and the counter balance with the Judicial Canon of Ethics, I can tell you that also was something when I was called upon to run for this position that was very difficult for me to balance. *The Republican Party of Minnesota v. White* says that a candidate has the ability under the First Amendment to the United States Constitution to take positions on certain issues. *The Judicial Canon of Ethics of Nevada* says precisely the opposite—that judges are not supposed to take positions on matters that could come before them. Thus, there is a direct conflict between the two most significant precedents that would govern one's conduct as a judge—The United States Supreme Court and *The Judicial Canon of Ethics*. *The Judicial Canon of Ethics* is probably the most significant for a judicial candidate. It is important for the electorate to believe that a judge has an open mind, is not biased, and would be able to make the hard call because that is what we want our judges to do. We

never want our judges to look at an issue and ask how their decision would look to the voters. We want them to weigh the case before them on the facts and arguments presented and be able to make the call, no matter what the political fallout is. If what we are looking for is a truly independent judiciary who can make unpopular decisions when necessary, the proposed legislation will go a long way toward doing that.

**Bruce Beesly, Board of Governors, Nevada State Bar Association:**

The problem, as I see it, is confidence in the judiciary. For a judicial system to be effective, it has to be impartial, but more important than that, the people who come before it need to believe it is impartial. The way elections are currently run, people do not believe it is impartial. What takes place are several months where candidates—instead of engaging in discourse about their qualifications—slam their opponent with half-truths, innuendos, and unflattering photographs. It is a situation where all the media is saying both of these people are not only bad candidates but horrible people, and then ultimately one of them is elected the judge. The situation worsens if one goes before the judge for whom there is now a preconceived negative image. When major litigants, such as casinos or banks, or their attorneys appear before a judge, they do not have to disclose whether they made campaign contributions to that judge nor does the judge have to disqualify himself. The current system makes it very likely that the citizens of Nevada are not going to have confidence in the judges.

What we are asking is that the Legislature let the voters decide if they are willing to change the system we currently have.

**Chairman Anderson:**

One of the questions that continually plagues me is the apparent lack of trust by the public. We tout ourselves as living in a democracy, and as a student of history I recognize that at the Constitutional Convention, the founders only allowed the people to elect the members of the House of Representatives. The President was elected by the Electoral College, United States Senators were elected by the state legislatures, and judges were appointed by the President for life. There clearly was no trust. Here at the state level, however, there has always been a founding concept and idea that people should be trusted. We allow them and always have allowed them to select the judges and the governor, as well as county and city officials, and state legislators. My view of that has always been that this is the government that is closest to the people. How do we foster trust in the judiciary if, in the initial selection, we do not trust them to put a judge in place? I can understand the 60 percent retention required for a judge to continue on the bench, but if the initial selection is not open to the people, how can that foster confidence in the judicial process?

**Bruce Beesly:**

I think it will foster trust in the judiciary because to a large extent it will eliminate the name calling and unflattering criticism leveled upon every candidate in the race. The reason that occurs is because it has proved to be an effective way to get elected. One does not get elected by talking about how hard one works, how educated one is, and so on. One gets elected by slamming the opponent. I believe there is a fundamental difference between judges now and other members of the government. All, except the Governor, have fairly limited districts to which they have to appeal. Judges have to appeal to everyone in their county. That works well in the rural counties but it is a problem in the larger counties. Judges cannot know or be known to the 400,000 people in Washoe County, or the 1.5 million people in Clark County, well enough to make a very good decision about their character. With respect to the people in the Assembly and in the Senate, it is easy enough to get out and become known to your rather limited group of constituents.

It is not a perfect system, but I think the elimination of contested elections would focus more on the judge's qualifications with the committee approval as opposed to one decision that some judge made that is offensive to a particular group who is willing to come after that judge.

Judges are supposed to make hard decisions, and hard decisions always leave someone aggrieved. Aggrieved people are often ready to mount substantial and costly campaigns to try to remove a judge who makes a decision that, while legally correct, they did not like.

**Rew Goodenow:**

There are two points I would like to make. First, 40 percent of the judges are appointed now under our current system. The people are not electing the judges, and we are not removing the vote from them. We are simply providing for a retention election. As Assemblywoman Allen pointed out, whether it will be easier or harder to get judges out of office remains to be seen. The second point, and more profoundly relevant to the system, judges should not have constituencies. Members elected to the Legislature have constituencies—Republicans and Democrats—that is how our system works; it is a good system, the best ever devised. Judges are sent to their judicial office expressly not to have a constituency, but to apply the law to the facts of each case in an impartial way. The problem in voting for a judge is that one may be presented with the outcome of a particular case, usually presented in a sound bite such as "this judge decides cases in favor of rapists and murderers." But one does not get to know what the facts of that case were. A judge has to look at those facts and, no matter how difficult the decision may be, decide the case, regardless of the political fallout.

**Robert Payant, Retired Judge, Reno:**

[Read from prepared statement (Exhibit D).]

With regard to Assemblywoman Allen's question on the 60 percent level, in my brief research I found it was only done in Illinois up to this point. Illinois has retention election for all of its judicial officers. I would be concerned about the 60 percent because we are told that about one-third of the people even in the 25 retention states vote no. For a candidate to move from one-third up to 60 percent, I do not know what may happen.

**Chairman Anderson:**

In Illinois, where you stated all judicial posts are on a retention basis, do they also include municipal judges and justices of the peace?

**Robert Payant:**

The study that I have seen was done by the American Jurist Society, and it only had high-level courts—the Supreme Courts, and the general jurisdiction courts. This proposal does not touch upon the justices of the peace or the municipal judges; that would not be changed by this resolution.

**Chairman Anderson:**

I was here when we moved the justices of the peace (JP) from a four-year term to a six-year term, and I heard them say that it would never happen to the municipals, and of course, we now know that the other judges felt that if it was good for one group it was good for them too. Why would this not be a good idea for municipals and JPs, in your opinion?

**Robert Payant:**

There would be no reason that it would not be a good idea. The professionalism of the JPs and the municipal judges in Nevada has moved steadily upward. I think that we have a good bench in the so-called lower courts, so it could happen. This piece of legislation does not do it, and perhaps it would not be attractive to a lot of people.

**Chairman Anderson:**

We will have your written testimony (Exhibit D) included in the record.

**Richard Morgan, Private Citizen, Las Vegas, Nevada:**

I am the Dean of the William S. Boyd School of Law, and an *ex officio* member of the State Bar Association Board of Governors. I am speaking today as an individual. Though I certainly endorse the State Bar's endorsement of S.J.R. 2, I am not speaking on behalf of the law school.

I want to make three points: The first is the importance of the independence and integrity of our judiciary. An independent judiciary is the bedrock of our freedoms and our constitutional rights, and the judiciary—unlike the Legislative Branch and the Executive Branch—is a non-majoritarianism branch of government; it is fundamentally different. It is not a matter of trusting the people; it is a matter of developing a branch of government which has true independence and true integrity. Second, I agree that getting the money out or at least getting most of the money out of judicial elections would be a very good thing. There are conflicts of interest and appearances of impropriety that the current fundraising practices engender, and we need to get away from that as much as possible. It is my understanding that in states that have the retention system, such as the "the Missouri Plan," it is relatively infrequent that there is a campaign mounted to oust a judge, so I think there is much less need to raise money and get the word out in those elections. I would also point out here there will be a report of the Judicial Evaluation Committee, which, if favorable, would give the candidate who is standing for retention a great leg up in terms of the electoral process. Third, I agree very strongly with Bruce Beesly that getting the mudslinging out will also be a very good thing. I think the judiciary injures itself, and loses the confidence of the people when candidates engage in the kind of mudslinging that goes on. I think we should lessen that, and this bill should to a large extent eliminate that.

**Chairman Anderson:**

Dean Morgan, my concern rests with the lack of confidence the public has currently in the judiciary. While I know that the canon and the judges that I deal with and have a great deal of respect for, I often do not hear that same level of respect when I am in the community. When I am speaking at public gatherings, it is not unusual for someone to come to me with a complaint relative to the way they were treated in court or some other question of ethical concern.

I recognize the money factor in terms of election; it is really going to be there, regardless of whether they are appointed or have to stand for retention. That is still going to amount to some type of campaign going on. That is an unfortunate factor of the reality of American life.

How do we shore up confidence in the judicial process by appointment? If we put them into this select group of people, the press is still going to pick on you. I do not think the stories in newspapers are going to change because of that. There is a focus made, but they are still going to find fault with those people who are dissatisfied with the system.

How do you perceive this as making it better in terms of public image if it does not have to go to the public?

**Richard Morgan:**

I believe that, to a large extent, the money will be removed from the process. I do not think retention elections are going to be contested very often by a funded campaign to kick a judge out. We can look at the states that have the "Missouri Plan" already and see how frequently that happens, but I think it is fairly infrequent.

A sitting judge standing for retention is not going to have to raise a lot of money. That fact will help increase the public's confidence in the judiciary. When people have an unhappy experience in a court room they are often looking for a reason, whether it is real or a matter of perception, for why they fared badly in that court room. They like to believe they had a just cause and were treated unjustly in the court room. They want to know why that was.

One of the reasons people seize upon is because the fix was in. The other person, or the lawyer for the other person, gave more money to the judge than my lawyer gave to the judge. To a very large extent, this joint resolution, if it is enacted into the *Constitution*, will fix that by taking most of the money out. I hope there will be much less judicial fund raising in connection with retention elections than there is now in connection with contested elections.

**Chair Anderson:**

Is there anyone else in support of S.J.R. 2?

**Alecia Biddison, Managing Partner, The Busick Group, Reno:**

[Read from prepared statement (Exhibit E).]

**Tonja Brown, Private Citizen, Carson City, Nevada:**

As a private citizen I want you to know that I spoke before the Judicial Selection Commission on October 23, 2006. It is a wonderful process. I was heard, they listened to what I had to say, and the people that I did not want to become judges did not get the positions.

**Tonja Brown:**

When I testified before the Judicial Selection Commission I had my input and I am not the only one. You are given the opportunity as a private citizen to voice your concerns either in writing or in person. They listen to what you have to say. They ask you questions. You are allowed to provide documents as to why you do not want this individual in office.

Justice Rose and I had a conversation. We were able to interact along with the other members of the panel. By the time it was done this person was not even in the running. I think the S.J.R. 2 bill will help eliminate the corruption that

goes on behind locked chamber doors. People will have a little more freedom to expose these judges for their wrongdoings and not have to fear their retaliation in the courtroom.

There will not be any more favoritism for defendants who have money or come from a well-known family. If the judges do not maintain the 60 percent retention election, then maybe now some more of the judges will follow the laws and not break them themselves.

In regard to accountability, S.J.R. 2 is a step in the right direction. I am in favor of it. In essence we still get to vote on it. If the judges are doing their jobs properly there should not be a problem with them getting the 60 percent vote.

**Chair Anderson:**

Are there any questions for Ms. Brown? [There were none.]

**Patty Pruett, Private Citizen, Dayton, Nevada:**

I am in support of S.J.R. 2. I am a housewife, mother, citizen, taxpayer, and I watched the after-effects of my two friends being able to use the Selection Commission. It was a good tool. It was effective. My friends were able to hand-in evidence and talk about the issues with a panel of people that came up with the right decision.

I would rather have a bunch of people take evidence and hear your testimony about your issues with the judiciary and understand that your evidence speaks for itself. The Commission can come to that conclusion on their own and act on the part of the people.

A lot of residents, taxpayers, and voters do not understand a lot about the judicial system. I did not until the last nine years of my life. I never needed it until recently. I would rather have a lot of people who know what the canons are, what the laws are, and what ethics are making decisions rather than a bunch of people that step into a voting booth and, because their neighbor likes someone, they will vote for that person. That is what I have seen for the 30 years that I have lived here.

I can just speak from my own experience and I will not name the judges, but there are three judges that I would not vote for if my child's life depended on it. That is because of favoritism, cronyism, and unethical behavior that I have seen with my own eyes.

I am in favor of this bill.

**Chair Anderson:**

This is changing the *Nevada State Constitution*. It has to go through this Body, and then goes through this Body again. Then it goes to the electorate.

**Patty Pruett:**

I understand that.

**Sherry Powell, Representative, Ladies of Liberty, Carson City:**

I represent women of the rural communities who are not as informed as citizens of Washoe County or Clark County.

I participated in the judicial selection process with the last seat in Carson City. It is processed in the paper. The public is given notice that they can respond in writing or in person.

I have voted since I was 18 years old and continue to do so. I can say that in the judicial selection process not only did I get to make comments against one person but also in support of another person. I have great faith in the judicial system.

I am also a paralegal. I have watched numerous judges and district attorneys and I have to say that if you get one bad one it can look bad for everyone else.

I had more power in the judicial selection process than I ever had voting. I believe that you underestimate the average person. I think we can understand certain issues. The judges are going to get bashed in their retention by certain people, but if it is not a major issue the public is not going to pay attention. If it is a major issue such as a bad decision, such as a rape case, it is going to draw attention from women. Right now we hold over 54 percent of the vote. As the other judge said, she was appointed and ran. She did very fine. I believe the citizens will feel more power with this particular bill than they have ever felt.

**Chair Anderson:**

Are there any questions? [There were none.]

**Cam Ferenbach, Board of Governors, State Bar of Nevada, Reno:**

Our organization supports S.J.R. 2. I would like to comment on one thought I had while listening to today's testimony. Throughout this process everyone thinks, "We have tried this twice before. Why do we think it is going to succeed this time?" The first answer is that there are modifications to the plan. The most important answer, especially in southern Nevada, is that there have been great changes in our community since the last trying.

One change is that the State Bar and our local County Bar are much larger and more sophisticated. We have a law school. We will be able to find quality participants both from the Bar and from the public who will devote the time required to serve on this Commission on judicial performance. That is going to be a lot of work and I would think as a legislator the question would be how effective can this be?

I believe, based on my experience with my colleagues and the Bar, that we will be able to take on this challenge and form an effective commission that will provide substantive information to the voters in the retention election—much more so than the attorney polls we have in the north and south right now.

**Chair Anderson:**

We will move to those in opposition.

**John Wagner, Representative, The Burke Consortium, Carson City:**

I do not think people are ready for this. In another two years when it goes back again, I do not think the people are going to vote for this bill. They have turned down two variations of this bill.

This 40 percent is a bit bothersome, because what is to prevent some judge from saying that the 40 percent is illegal and kick it up to 50 percent. You are still going to have judges putting money in for their reelection. You are going to have retained Judge So-and-so. You are going to have a committee to get rid of Judge So-and-so. It is still going to generate money and still going to be political in a lot of respects.

**Chair Anderson:**

Are there any questions? [There were none.]

**Warren Russell, County Commissioner, Elko:**

Elko County Commission has voted unanimously to oppose this particular bill. The comments I make may or may not reflect any particular item. They are my comments.

If the attorneys of the State of Nevada were the members who would decide if this bill would move forward, we would have unanimous consent by the attorneys to move forward. If that does not scare you then you are not as cynical as I am.

I was a classroom teacher and 60 percent is barely passing. So we are going to measure our judges by that barely passing rate and say they are good enough to stay.

I would like to respond to Senator Raggio on this issue as I disagree with him and his views. Senator Raggio commented in a number of cases that this appointment process is far superior to the election process. He gave several reasons. He said the judiciary would be removed from the political process. I suggest that this is not true. Right now the political process would be transferred to a group of people who had a guild mentality. In other words, we are going to make decisions about this. Even though the Governor has to appoint these people to this particular commission to bring appointments, I still think the political process would be involved.

Retention might become a campaign issue. You would have exactly the same situation except you would not be running against another person. You would be running against your own campaign or promoting your own campaign.

Senator Raggio said that judges would not have to solicit contributions from possible litigants and attorneys in cases which come before them. This is a good argument but judges, unlike other elected officials, do not have to disclose their potential conflicts of interest. Maybe the answer would be for them to fully disclose and recuse themselves, if appropriate, if an attorney or litigant came before them in a case.

We have replaced a justice of the peace and he recuses himself if he has been involved with a litigant because he was a district attorney. Why would a judge not do this?

The District of Columbia and 20 other states are progressive and have an initial election process for new judges. I do not look for the ideal for the State of Nevada and the District of Columbia.

Senator Raggio has said this will create an independent judiciary. I would suggest that this resolution could be called the "Great Divorce." It is a divorce between the public and an unscrutinized judiciary. Accountability requires an informed review by citizens, not by a particular group of colleagues who take a look at someone's idea. An independent judiciary is a result of citizen participation. It is the wrong answer to a minor problem.

**Chair Anderson:**

Are there any questions?

**Assemblyman Horne:**

Every election many people I know who are not attorneys ask me who to vote for as judge. When I talk to my colleagues they tell me the exact same thing. All of their acquaintances and friends who are not attorneys ask them who to

vote for. There seems to be some sort of disconnect between the general population voting for judges and knowing who they are voting for. Do you not think this matter still allows them to vote? It only has a mechanism to put in someone who may be qualified. That qualification has been vetted and now the voters get to decide whether or not the person with those qualifications have met our desires of a judge on the bench.

**Warren Russell:**

I would suggest that I have had the same experience and it has been my responsibility to research. We had a number of judges who came two years ago to Elko County and became Supreme Court justices. They came and talked about how it worked. They talked about their positions. It was very informative. We probably had 75 people in the room and most of them were not attorneys. These people were listening and putting out information.

I am also confronted by people asking me who to vote for district attorney? Who should I vote for treasurer? Who should I vote for Assemblyman? It is a matter of being informed. Part of the way citizens inform themselves is to ask people who have some familiarity with the particular elected office.

The right to vote and select those who will rule over us is a part of our history. My relatives signed the *Declaration of Independence*. One of my relatives, a great-great-uncle, was a Supreme Court justice of the State of Ohio. I have a relative who ran for Vice President and lost to Lincoln. This voting right and the ability to select the person who will rule over us—the judges are moving more toward a legislative kind of role and that is wrong. As they move that way if they are going to become legislators, then we should be able to choose who is going to be our legislators.

**Assemblywoman Allen:**

I spent a few minutes looking online and the 60 percent provision concerns me. Of the members of the Committee here, Dr. Mabey, myself, Ms. Gerhardt, Mr. Goedhart, and the Chair did not acquire 60 percent of the vote in our last campaigns. For those of you who come here before us and say that 60 percent is an easy mark to reach and that any decent judge would reach 60 percent is offensive to me.

Mr. Russell, I looked up your last competitive campaign and you acquired 56 percent in your last primary.

**Warren Russell:**

It was less than that the first primary. It was 51 percent but my general was 71 percent. That is a passing grade.

**Lynn Chapman, Vice President, Nevada Eagle Forum, Sparks:**

I have a handout for you (Exhibit F). Rice University put online an analysis of every state's Supreme Court cases heard from 1995 to the present. They have over 30,000 cases. It has other things like biographical information about the judges, the judge's vote in the case, the outcome, and the legal issues raised. Everyone has a tool at their fingertips to find out about judges.

*The Gotham Gazette* had an interesting true story about a party chairman named Clarence Norman who decides on a candidate to be Supreme Court Judge in Brooklyn, New York. The candidate, who is selected by Chairman Norman, is referred to a screening panel, appointed by Chairman Norman. The district leaders who have party ties then screen the candidates. Finally the judges are selected by a judicial convention made up of various friends, relatives, business partners, and employees of the party overseen by Chairman Norman. There can be all sorts of corruption by appointment.

I would also like to bring up the International Association of Woman Judges. They had a conference last year and in their synopsis they said that 150 years ago many states had changed to the election of judges to avoid politics to keep the governor from appointing his buddies or his largest campaign contributors.

In this synopsis it also mentions Deborah Agosti who is from Reno. She was also the former Chief Justice for Nevada. She favors election of judges saying she would never have become a judge, much less a chief justice, in the appointive system.

I am not in favor of S.J.R. 2. It is a terrible idea because the judges in the State are the closest to the people. We should have a right to make some of those decisions as the people of this State.

**Janine Hansen, Representative, Independent American Party, Elko:**

We oppose S.J.R. 2. We support the right of the people to vote for their judges. It is important that we not ignore the will of the people. This bill could lead to less accountability and more corruption.

At the bottom of page 2 of the bill, line 34 we read of the conclusion of the review. On top of page 3 it talks about "not later than six weeks before the general election at which the question of whether a justice or judge shall succeed himself is presented, the commission shall prepare and release a public record..." the issue was mentioned by some of the members of the Senate Judiciary Committee and at that time I testified on this same issue.

That is a timeline which is far too close to the election. We now have early voting more than two weeks before the election. This would put this report only four weeks out from early voting. We now have three months before the general election with regard to the primary election. Many organizations like mine, which prepares a voter guide, would like to have the information available in order to help get it out to the rest of the general public. This is logistically inconvenient for many people who are participating in the election, and if this goes forward that needs to be changed so it would be more in line for people to be able to disseminate the information and have access to it.

On lines 9, 10, and 11 we see that the vote of the individual members of the commission will not be disclosed. We have had a wonderful tradition in the State of Nevada for open meetings, not secret tribunals. I am concerned about the fact that this commission will also be held accountable and open to the public. We should know what their votes are because an open and accountable government is what this body has supported.

On page 6, Section 3 we read that the Governor must appoint one out of the three members that are selected by the judicial review committee. As Assemblyman Carpenter mentioned, if the Governor does not appoint one of the three the first time, then he has three more to select from. If he does not make the appointment he shall make no other appointments to public office.

The Governor's roll in appointing judges will be greatly expanded from what it is now. This will force the hand of the Governor to make the appointment and it will handcuff him in using his own judgment. I am concerned about that. We should be concerned about the kind of politics that goes on behind the scenes in any appointing process. It can be extremely political with regard to that.

The people have done a good job in many ways in electing judges. They were concerned about the decision in *Guinn v. Legislature of the State of Nevada*. They were informed enough that the chief justice who oversaw that felt it important to not run again. The judge who wrote that decision lost at the last election. They were held accountable to the will of the people and scrutinized by the people.

We see that in the case of many federal judges, like in the case of the "Pledge of Allegiance" where they completely ignore the will of the people because they are not held accountable. Oftentimes the campaign process can be messy and political speech can be messy. To say it is demeaning to ask for money would be demeaning for all of us who have been in that position. Free speech is the best way to resolve issues that come out pro or con against someone. What we need is more free speech, not less.

My brother Joel Hansen ran for the Supreme Court. He had a different philosophy than those who would ever be approved by a judicial selection committee. He would have been an independent voice. The powers-that-be got very concerned when he was leading in the polls. This process would be a closed shot.

I should have disclosed before I began that I do come from a family that has three lawyers, and I have on many occasion asked them their opinions on whom to vote for.

**Sharron Angle, Private Citizen, Reno, Nevada:**

I come representing myself today. I am in opposition of S.J.R. 2. The election and free election system is not broken. What we have in this bill is an attempt to legislate morality. That is truly what is broken in this country. The moral fiber that has given us ethical people as candidates is broken. That is what needs to be fixed. Senate Joint Resolution 2 is not the vehicle that will fix that. It will give us less opportunity to discover what we want in a judge. The pre-election process for all people who run for candidacy is the right system, although not perfect.

In Missouri, where this plan was born, they are now trying to reinstate the election process through legislation. We have 27 states that still elect judges.

This bill also engenders apathy among the voters because a retention election is not a free election. If I ran unopposed I would be delighted because then we could all receive a 70 percent vote in an election. That is what this retention election is. It is not where you get to vet ideas, it is where you select someone or reject them. When you have that kind of election you find that voters do not even vote when there is no opposition. They just say, "Who cares?"

All of us having been in the "People's House" want people to vote, we want them to come out and express their opinions. We do not want to put an end to legislation that engenders apathy.

The Commission is made up of four attorneys, four non-attorneys, and the Chief Justice, who is an attorney. That makes a five to four attorney split. In other states where the system is in place, they find that the non-attorneys actually defer to the attorneys for the same reason that Assemblyman Horne said—is attorneys know about what is happening.

I would say that this bill will engender a more cronyistic system because attorneys will now be choosing attorneys. As I listened to the testimony I was overwhelmed by the attorneys here and their support for this.

**Chair Anderson:**

Are there any questions? [There were none.]

Is there anyone else who wishes to testify in opposition or as neutral to S.J.R. 2? [There were none.]

I will close the hearing on S.J.R. 2.

I will open the hearing on Senate Bill 148 (R1).

**Senate Bill 148 (1st Reprint): Revises certain provisions of the Uniform Principal and Income Act (1997). (BDR 13-903)**

**Keith Lee, Counselor, Sutton Place, LLC:**

Senator Wiener asked me to fill in for her in presenting S.B. 148.

Senate Bill 148 was brought forward by Senator Wiener although it shows as a Senate Judiciary Committee introduction. It was, but it was Senator Wiener's bill. She brought it on behalf of a constituent, Mr. Lewis Shupe.

My client and I got involved after we saw the original S.B. 148, with the concurrence of Senator Wiener and Chair Amodei of the Senate Judiciary Committee, and offered an amendment that resulted in what you see in Section 1. My client, Sutton Place LLC, is a company that is the trustee of a number of trusts that invest quite heavily in other investment trusts and entities. What we are talking about in Section 1 is how any trustee who manages funds for trusts, upon receipt of money from those investments, must allocate that money between the income portion and the principal portion of the trust. This is important because so many trusts these days have beneficiaries of the income piece and beneficiaries of the principal piece. They also have remainder beneficiaries of both of those pieces so it is important for the trustee to try to allocate, within the bounds of law, money it receives between principal and income so there is a reasonably fair allocation of both of those to both of those particular entities within the trust.

Presently Chapter 164 of the *Nevada Revised Statutes* (NRS) is the Uniform Principal and Income Act that was adopted by this Body in 1999 after it was drafted in the mid-1990s and approved by the Uniform Law Commission in 1997.

I have submitted a letter (Exhibit G) that I ask be made part of the record from a Mr. E. James Gamble, who is an attorney in Michigan. He was the co-reporter and principal draftsman of the Uniform Principal and Income Act of 1997. He was instrumental in drafting the amendment that is now part of Section 1.

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**Testimony of  
Senator William Raggio**

**Assembly Judiciary Committee  
May 1, 2007**

Senate Joint Resolution No. 2 proposes to amend the Nevada Constitution to provide for the initial appointment by the Governor of Justices of the Supreme Court and Judges of the District Court. After the initial appointment, if a Justice or Judge wishes to serve another term, he or she must make a declaration of candidacy for a retention election. If 60 percent or more of the votes cast are in favor of the retention of the Justice or Judge, he or she will then serve a 6-year term and must run in a retention election if another 6-year term is desired. If the Justice or Judge does not make a declaration of candidacy for a retention election or if less than 60 percent of the votes cast are in favor of retention, a vacancy is created at the end of the term which must be filled by appointment by the Governor.

SJR 2 also requires each Justice or Judge who has made a declaration of candidacy for a retention election to undergo a review of his or her performance as a Justice or Judge. This resolution creates the Commission on Judicial Performance and requires the Commission to perform these reviews. The review of each Justice or Judge is required to consist of a review of the record of the Justice or Judge and at least one interview of the Justice or Judge. At the conclusion of this review, the Commission is required to prepare and release to the public a report containing information about the review and a recommendation on the question of whether the Justice or Judge should be retained.

*in large measure*

I have proposed this amendment of the constitution because too often judicial elections become embroiled in politics. This appointment system with retention elections would remove judges from partisan politics and would free judges from the necessity of ~~soliciting~~ *soliciting* ~~taking~~ political contributions from attorneys, law firms, litigants and potential litigants (the usual source of financial contributions in judicial elections).

The District of Columbia and ~~twenty~~ *twenty* three states, which are among the most progressive in judicial reform, have adopted a nominating commission plan for appointing judges to an initial term on the bench. Fifteen of these states also hold retention elections at the expiration of judges' terms. The people of Nevada have already approved an amendment to our Constitution which provides for a Judicial Selection Commission to make recommendations for ~~filling~~ *filling* vacancies at the Supreme Court and District Court level. It is this commission that ~~I propose~~ *is proposed* to make nominations for the initial appointments by the Governor.

SJR 2 contains the best features of all of the merit selection plans. Similar proposals have been before this body and the electorate in past years, but were defeated. The events which have occurred since these measures were considered fully justify that this issue be submitted to the people of this state for further consideration.

*Enlarge on this*

SJR 2 is intended to ensure *insofar as possible* an independent judiciary. It will enable a judge to devote his or her entire time to the business of the court since the judge will not take part in the usual political campaigns. The plan ensures that full consideration will be given to the ability, character and qualifications of a judicial candidate before that person's name is permitted to go on the ballot and will cause the attention of voters to be focused on a

judge's record, making it easier to remove incompetent judges from office and to retain judges whose records are meritorious.

SJR 2 will encourage well-qualified people to serve on the bench who would not submit themselves to the ordeal of campaigning for office under the political system or who lack the means of financing such a campaign. I believe it is time to give the people of this state an opportunity to ensure an independent judiciary in this state

**Selection through Nominating Commission  
for Supreme Court**

1. Alaska	Retention Election (10 years)
2. Arizona	Retention Election (6 years)
3. Colorado	Retention Election (10 years)
4. Connecticut	
5. Delaware	
6. District of Columbia	
7. Florida	Retention Election (6 years)
8. Hawaii	
9. Indiana	Retention Election (10 years)
10. Iowa	Retention Election (8 years)
11. Kansas	Retention Election (6 years)
12. Maryland	Retention Election (10 years)
13. Massachusetts	
14. Missouri	Retention Election (12 years)
15. Nebraska	Retention Election (6 years)
16. New Mexico	
17. New York	
18. Oklahoma	Retention Election (6 years)
19. Rhode Island	
20. South Dakota	Retention Election (8 years)
21. Tennessee	Retention Election (8 years)
22. Utah	Retention Election (10 years)
23. Vermont	
24. Wyoming	Retention Election (8 years)

# STATE BAR OF NEVADA

MAR 16 2007

March 12, 2007

Senator William J. Raggio  
Nevada State Senate  
P.O. Box 281  
Reno, NV 89504-0282



600 East Charleston Blvd.  
Las Vegas, NV 89104-1563  
phone 702.382.2200  
toll free 800.254.2797  
fax 702.385.2878

Dear Senator Raggio:

The State Bar of Nevada (SBN) understands that the unique role of judges in our democratic system places candidates for judicial office in a position to be held to higher standards than candidates for other elective office. Judicial candidates not only must be unbiased and impartial, they must avoid any appearance of bias or partiality. Increasingly the influence of money in judicial campaigns has become an issue of concern. The SBN thinks it is important to de-emphasize the influence of money in the judicial election process.

With Joint Resolution No. 2 (SJR 2) currently before the Nevada State Senate, the SBN has taken proactive steps to support this Resolution. To this end, the SBN Board of Governors, during their March 7, 2007 meeting, voted to support SJR 2. It is an important step towards ensuring public trust and confidence in the neutrality and independence of the judiciary. SJR 2 presents a chance to get behind a change which can have a positive effect on our justice system

For your information, attached is the white paper the SBN will use to focus its communications to members of the State Bar of Nevada on this important initiative. If I can answer any questions or can be of any assistance please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kimberly K. Farmer".

Kimberly K. Farmer  
Executive Director

cc: Rew Goodenow

9456 Double R Blvd., Ste. B  
Reno, NV 89521-5977  
phone 775.329.4100  
fax 775.329.0522

[www.nvbar.org](http://www.nvbar.org)

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# STATE BAR OF NEVADA

## State Bar Supports Senate Joint Resolution No. 2

The State Bar of Nevada supports the enactment of SJR 2. Nevada's lawyers, those in the best position to evaluate the day-to-day operations of our courts; strongly believe it is time to change our system. SJR 2 provides for merit selection of judges and for the people to vote to remove judges who are not doing their jobs.



1. On March 7, 2007, the Board of Governors of the State Bar of Nevada voted overwhelmingly to change the system and advocate support for SJR 2.
2. Recent federal court decisions provide new reasons to change our system. Due to the United States Supreme Court's 2002 *Republican Party of Minnesota v. White* decision, candidates for judicial office will be able to state how they would decide cases, while accepting campaign contributions from businesses, like insurance companies, lawyers and special interests. Nevada is the only state in which elected judges are permitted to directly solicit campaign contributions. Judicial ethics rules and decisions in Nevada provide that no conflict exists when a judge decides a case involving a party that has given them a campaign contribution or who is represented by a lawyer who has given them a campaign contribution.
3. Judicial ethics rules exempt campaign contributions from their otherwise strict approach of requiring judges to disqualify themselves when their impartiality might reasonably be questioned.
4. The popular election does not provide an adequate method for voters to assess the qualifications, or judicial temperament, of judges. Because cases are decided on disputed facts that are not presented to the voters, and the voters, as a practical matter, are unable to watch proceedings, voters lack adequate information. SJR 2 provides for a judicial review commission that will report to the voters whether judges are doing their job.
5. Judicial campaigns require that candidates devote an increasing amount of time and resources to fundraising and campaigning and a decreasing amount of time to the increasing workload, particularly in Clark County, of Nevada's courts, which are already some of the busiest in the nation.
6. In the last election, new judicial campaign fundraising records were set in four states. In at least eight state Supreme Court campaigns, fundraising soared past one million dollars. The collective cost was more than thirty million dollars for the Supreme Court campaigns alone.
7. Judicial campaigns are becoming more expensive, costing businesses, citizens and interest groups hundreds of thousands (district court) to millions (supreme court) of dollars.
8. Ethics rules prohibit judges from advocating that the system should be changed.
9. SJR 2 will provide the following benefits: (a) reduced cost to all participants and the public of the election system; (b) elimination of the influence of money on the resolution of individual disputes in Nevada's courts; (c) reduction in negative campaigns and negative publicity about Nevada's justice system; and (d) judges will have more time to devote to resolving disputes and deciding cases.

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# Start process that allows voters to decide on judges

April 18, 2007

This week's vote in the state Senate approving a modified form of the Missouri Plan is a good start toward revising the current -- unsatisfactory -- method of selecting the best and most qualified judges. The Assembly should follow the Senate's lead and begin the process to allow voters to decide whether to amend the Constitution.



Nevada Sen. Mark Amodei, R-Carson City, previously said that letting voters compare judicial candidates is best, but he voted against Senate Joint Resolution 2 in a 15-6 vote. Five Republicans and one Democrat rejected the proposal. (CATHLEEN ALLISON/NEVADA APPEAL)

This discussion has been going on since at least the mid-1980s. The current proposal seems to be the best solution we've had so far.

The measure, approved as Senate Joint Resolution 2, would amend the state Constitution. It aims to fix much of what is wrong with requiring judicial candidates to campaign for money, as they campaign for votes. The plan aims to dissolve possible political pitfalls for judges when running for office. (Most of their campaign funds come from lawyers and litigants, who appear before them, so the perception of conflict of interest is inevitable, even if it isn't actual.)

The Constitution already allows selection of candidates by a commission in the case of a vacancy. The current debate, then, rests on whether they should be elected or appointed -- beholden to the voters or to a governor who appoints them.

SJR2 possesses faithfulness to the voters' wishes and a certain symmetry that offers much of what anyone would wish in choosing powerful public officials. It provides for informed choice by a panel of experts, a trial period for the judges, but most of all, it allows voters to have the ultimate say about the judges they want to retain or to dismiss after a year of service.

Judges are engaged in a complex system whose inner workings typically confounds the average voter. People don't always go into the voting booth with a clear vision of the candidates' qualifications or of overall performance (even when they have a service record and stand for re-election to the bench). SJR2 could give voters some help but would not take away their choice.

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Relieving judges from the indignity and distraction of having to beg for campaign funds would be a good result, but it is not the most important one. Most important is that voters want to have a say in who their top court officials will be and they deserve it. They deserve to have the choice and they deserve to decide whether they want to amend the Constitution to give them that choice.

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Photo: Bill Raggio

March 20, 2007

## Taking cash power out of the judiciary

### Court reformers want judges to be appointed, at least in the beginning

By Sam Skolnik  
Las Vegas Sun

Nevada court reform advocates concerned by the growing influence of money in state judicial elections have always banked on proposals such as the so-called "Missouri Plan" and "Nevada Plan" to try to fix the problem.

Those efforts hit brick walls in the form of voters reluctant to give up their Nevada constitutional right to choose their own District Court judges and Supreme Court justices.

But now, a wide and bipartisan array of would-be reformers - from judges and lawyers' groups to academics and veteran legislators - is excitedly touting Senate Joint Resolution 2, their newest, and they say most inclusive effort to change the system.

### Meet the Raggio Plan.

The measure, sponsored by Senate Majority Leader Bill Raggio, R-Reno, and currently before the Senate Judiciary Committee, is similar in several ways to the Missouri Plan.

## CURRENT PLAN

Nevada District Court judges and Supreme Court justices are elected every six years in nonpartisan, open elections. A bill recently proposed by Sen. Bill Raggio, R-Reno, would dramatically change the way District Court judges and Supreme Court justices are selected. The bill, currently before the Senate Judiciary Committee, has garnered strong bipartisan support. Following are the differences between the current law, two other plans for change that have been floated in the past and Raggio's proposal:

## MISSOURI PLAN

The state's Judicial Selection Commission would select three candidates for open seats, and the governor would

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The bill would mandate that the state's Judicial Selection Commission choose the names of three candidates for vacant District and Supreme Court seats, and then pass those names on to the governor, who would make the appointment.

After an initial term of one to two years, the judge would run in a "retention election," in which the only choice would be whether to keep or dump the judge. If retained, the judge would serve a six-year term.

Raggio's bill differs from the Missouri Plan in that the candidate would need 60 percent of the vote to be retained. Perhaps more importantly, his bill also would create the Judicial Performance Commission, which would review the judge's record and issue a public report before the election that would include a recommendation on whether the judge should be retained.

The Raggio Plan would differ greatly from the current system of nonpartisan, contested elections.

Change is necessary, proponents say, because judicial races too often have become "embroiled by politics," as Raggio said at a March 8 hearing on the topic, and have been tainted by an increasing reliance on fundraising.

"I've always thought the Founding Fathers showed wisdom by having federal judges appointed, and keeping politics out of the system," said Sen. Warren Hardy, R-Las Vegas, one of the bill's co-sponsors. "We need to find a way to get our judges out of politics and just have them concentrating on the law."

The issue of independence among Nevada's judiciary was put in stark relief when the Los Angeles Times last year published a series of articles about conflicts of interest involving several Las Vegas-based judges.

The series called Las Vegas a "juice town" in which attorneys and businesspeople give contributions to curry favor with judges, and it detailed repeated examples of apparent conflicts of interest that

make the appointment. Thereafter, judges would run in uncontested "retention" elections, in which voters could vote only either to keep or dump the judge.

**NEVADA PLAN**

A compromise plan proposed in recent years in which a candidate would be appointed by the same process as the Missouri Plan, but then two years later would run in an open, contested race. Then, if elected, the judge would run in retention elections every six years thereafter. This plan, thought to be more palatable to Nevada voters, never gained political traction.

**RAGGIO PLAN**

Somewhat similar to the Missouri Plan. For vacant District Court and Supreme Court seats, the governor would appoint one of the three names given to him by the Judicial Selection Commission. The judge's initial term would last from one to two years. Then, if the judge wants to stay in office, he would run in a retention election, needing to gain 60 percent of the vote to serve another six-year term. The Raggio Plan also would amend the Nevada Constitution to require each judge or justice to undergo a performance review by the newly created Judicial Performance Commission. This commission, after reviewing the judge's record and interviewing him, would then publicly release a report before the election, including a recommendation on whether the judge should be retained.

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occurred when campaign contributors appeared before the recipients in court.

Changing the system would require amending the Nevada Constitution, a lengthy and arduous task. First, the Legislature would need to pass the same bill in two successive sessions. Then, voters would need to approve the change in a referendum. That means that even if passed by this Legislature, the soonest the bill could take effect would be Jan. 1, 2011.

Attempts to change the process by adopting versions of the Missouri Plan have failed twice in Nevada. Voters rejected the changes in 1972 and 1988.

Yet supporters believe momentum has shifted. Just a handful of conservative citizen-activists showed up in opposition to Raggio's bill at the recent hearing. Several prominent reform proponents testified, including Reno District Judge Bridget Robb Peck and UNLV Boyd School of Law Dean Richard Morgan.

"Given the expose of the L.A. Times articles, and given some of the distasteful judicial campaigns of recent years, and because of the increasing amount of money it takes to get elected judge in Nevada, if it's going to happen, it's going to happen now," said Las Vegas lawyer Vince Consul, past president of the State Bar of Nevada.

The current president, Rew Goodenow, wrote in a position paper supporting Raggio's bill that the measure would reduce the number of negative judicial campaigns, reduce the costs to candidates and allow judges more time to do things like "resolving disputes and deciding cases."

Goodenow also noted that Nevada is the only state that allows its elected judges to directly solicit campaign contributions - a more dangerous practice than ever given a 2002 U.S. Supreme Court ruling that allows judicial candidates to state how they would decide individual cases the very same moment they are accepting contributions.

"The issue of independence in the judiciary is rock-bottom vital," said Craig Walton, president of the Nevada Center for Public Ethics and another reform advocate. "If you can't count on the courts to give you a fair shake, then all is lost."

Raggio noted in his testimony that 23 states and the District of Columbia have judges that are appointed to their initial terms. Fifteen of those states also then hold retention elections for successive terms.

His is not a perfect plan, Raggio conceded. Judges would likely still need to raise some money for retention elections, he said, "but they wouldn't have to raise the kind of money they would in a contested election."

Like the jury system, he said, "it may not be ideal, but it's the best system we can get."

Opponents of change say the gubernatorial appointments raise the specter of possible cronyism, and that, more simply, judges elected in open contests are typically responsive to the concerns of voters.

Despite these long-running concerns, change may finally be coming,



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Today: June 11, 2006 at 7:34:2 PDT

## Jon Ralston outlines the need for Nevada judges to be appointed

In the space of three days and a few thousand words, the Los Angeles Times has pulled back the sheen that civic leaders have spent years earnestly putting over Las Vegas, removing the beautiful illusion of a glistening, evolving city and replacing it with the ugly reality of an incestuous, corrupt backwater.

The newspaper's investigative series - "Juice vs. Justice" - is the product of years of research and interviews, replete with telling vignettes and documentary evidence of how relationships and money pollute the valley's judicial system.

Las Vegas, in the words of the series, is a "juice town," which may generate Louis Renault-like sarcastic exclamations but still reinforces an image of the city and state as a Third World country, ruled by sin and sordid behavior, unfit for inclusion in respectable society.

Like many others who call Southern Nevada home, I recoil at the prospect of the snickering that the story will generate across the country, where any attempt to be taken seriously will be impaired and where ne'er do wells who didn't do well here will leap to rationalize their lack of success because of the soiled system. But unlike many others, I won't insist the story is exaggerated, twisted, distorted.

For I come here not to bury Las Vegas nor to praise its honest lawyers and judges. I come to exploit this unfortunate expose to once again make the case for reform of the one of the three branches of government that can least afford to be tarnished by allegations of influence-buying.

You cannot take the money out of elective politics for the executive and legislative branches. But for the judicial branch, where those in robes frequently must rule on the actions of the other two, the process must be

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purified - or a reasonable facsimile thereof.

And such a method exists and has been pushed for years by myself and many others, especially judges, lawyers and politicians such as state Senate Majority Leader Bill Raggio. It is called the Missouri Plan, or some variant, whereby judges are appointed rather than elected.

This makes sense for so many reasons and would erase any pay-to-play arrangement that, so the Times alleges, exists now in the court system. By erecting a proper vetting mechanism, you could be better assured of getting qualified jurists with integrity on the bench as opposed to campaigns in which who has the biggest war chest and best-connected consultants often wins.

What's more, voters know little about judges unless they have appeared in his or her court, as opposed to what they might know of legislators or local elected officials who cast myriad votes that affect people's lives.

There are real pitfalls in enacting an appointive system. The most obvious is that you create a smaller universe of possible judges and perhaps create a greater of two evils - an even juicier system whereby those doing the appointing salivate over the chance to pay back their cronies and, alas, campaign contributors.

Others say that a Missouri Plan would reduce the ability of minorities and women to gain appointment because of the inevitable cronyism. But I see it differently: Those making the appointments would be ultra-sensitive to the less juiced because they do have to face voters.

The most salient problem in enacting a Missouri Plan or a modified alternative, though, is that critics have such a compelling, albeit political counter-argument: Don't let the powers that be take power away from the people.

The late Mike O'Callaghan, the former governor and Sun executive editor, used to argue with me about my position, brandishing the voters-should-have-their-say club. His position was at least principled, as opposed to the state's most influential media outlet, the Las Vegas Review-Journal, which flip-flopped on a Missouri Plan ballot question almost 20 years ago and whose "paper of record" version of reporting on the legal system is to send out surveys to lawyers and ask them to be unbiased judges of judges - and anonymously to boot.

If the L.A. Times series can reawaken the debate over taking judges off the ballot, maybe it can, ironically, be a catalyst for evolution from small-town backwater to big city.

*Jon Ralston hosts the news discussion program "Face to Face With Jon Ralston" on Las Vegas ONE and also publishes the daily e-mail newsletter "RalstonFlash.com." His column for the Las Vegas Sun appears Sunday, Wednesday and Friday. Ralston can be reached at 870-7997 or through e-mail at [ralston@vegas.com](mailto:ralston@vegas.com).*

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# Judicial Selection in the States

## Appellate and General Jurisdiction Courts

### "Initial Selection, Retention, and Term Length"

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
Alabama						
Supreme Court			X		6	Re-election (6 year term)
Court of Civil App.			X		6	Re-election (6 year term)
Court of Criminal App.			X		6	Re-election (6 year term)
Circuit Court			X		6	Re-election (6 year term)
ALASKA						
Supreme Court	X				3	Retention election (10 year term) <sup>1</sup>
Court of Appeals	X				3	Retention election (8 year term)
Superior Court	X				3	Retention election (6 year term)
ARIZONA						
Supreme Court	X				2	Retention election (6 year term)
Court of Appeals	X				2	Retention election (6 year term)
Superior Court (county pop. greater than 250,000)	X				2	Retention election (4 year term)
Superior Court (county pop. less than 250,000)			X		4	Re-election (4 year term)
ARKANSAS <sup>2</sup>						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
CALIFORNIA						
Supreme Court		X(G)			12	Retention election (12 year term)
Courts of Appeal		X(G)			12	Retention election (12 year term)
Superior Court <sup>3</sup>			X		6	Nonpartisan election (6 year term) <sup>4</sup>

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
COLORADO						
Supreme Court	X				2	Retention election (10 year term)
Court of Appeals	X				2	Retention election (8 year term)
District Court	X				2	Retention election (6 year term)
CONNECTICUT						
Supreme Court	X				8	Commission reviews incumbent's performance on noncompetitive basis; governor renominates and legislature confirms
Appellate Court	X				8	Same
Superior Court	X				8	Same
DELAWARE <sup>5</sup>						
Supreme Court	X				12	See Footnote 6
Court of Chancery	X				12	See Footnote 6
Superior Court	X				12	See Footnote 6
DISTRICT OF COLUMBIA						
Court of Appeals	X				15	Reappointment by judicial tenure commission <sup>7</sup>
Superior Court	X				15	Reappointment by judicial tenure commission <sup>7</sup>
FLORIDA						
Supreme Court	X				1	Retention election (6 year term)
District Court of Appeal	X				1	Retention election (6 year term)
Circuit Court			X		6	Re-election for additional terms
GEORGIA						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Superior Court			X		4	Re-election for additional terms
HAWAII						
Supreme Court	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)
Intermediate Court of Appeals	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)
Circuit Court and Family Court	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)

1. In a retention election judges run unopposed on the basis of their record.  
 2. In November 2000, Arkansas voters passed an amendment to the Arkansas constitution shifting judicial elections to a nonpartisan system.  
 3. The California constitution provides that local electors may choose gubernatorial appointments instead of nonpartisan election to select superior court judges. To date, no counties have chosen gubernatorial appointments.  
 4. If the election is uncontested, the incumbent's name does not appear on the ballot.

5. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.  
 6. Incumbent replies to nominating commission and competes with other applicants for nomination by the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.  
 7. Initial appointment is made by the President of the United States and confirmed by the Senate. Six months prior to the expiration of the term of office, the judge's performance is reviewed by the tenure commission. Those found "Well Qualified" are automatically reappointed. If a judge is found to be "Qualified" the President may nominate the judge for an additional term (subject to Senate confirmation). If the President does not wish to reappoint the judge, the District of Columbia Nomination Commission compiles a new list of candidates.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS	INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION	
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission				Non-Partisan Election
<b>IDAHO</b>						
Supreme Court			X	6	Re-election for additional terms	
Court of Appeals			X	6	Re-election for additional terms	
District Court			X	4	Re-election for additional terms	
<b>ILLINOIS</b>						
Supreme Court				X	10	Retention election (10 year term)
Appellate Court				X	10	Retention election (10 year term)
Circuit Court				X	6	Retention election (6 year term)
<b>INDIANA</b>						
Supreme Court	X				2	Retention election (10 year term)
Court of Appeals	X				2	Retention election (10 year term)
Circuit Court				X	6	Re-election for additional terms
Circuit Court (Vanderburgh County)			X		6	Re-election for additional terms
Superior Court				X	6	Re-election for additional terms
Superior Court (Allen County)			X		6	Re-election for additional terms
Superior Court (Lake County)	X <sup>1</sup>				2	Retention election (6 year term)
Superior Court (St. Joseph County)	X				2	Retention election (6 year term)
Superior Court (Vanderburgh County)			X		6	Re-election for additional terms
<b>IOWA</b>						
Supreme Court	X				1	Retention election (8 year term)
Court of Appeals	X				1	Retention election (6 year term)
District Court	X				1	Retention election (6 year term)
<b>KANSAS</b>						
Supreme Court	X				1	Retention election (6 year term)
Court of Appeals	X				1	Retention election (4 year term)
District Court (seventeen districts)	X				1	Retention election (4 year term)
District Court (fourteen districts)			X		4	Re-election for additional terms
<b>KENTUCKY</b>						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Circuit Court			X		8	Re-election for additional terms
<b>LOUISIANA</b>						
Supreme Court			X <sup>2</sup>		10	Re-election for additional terms
Court of Appeals			X <sup>2</sup>		10	Re-election for additional terms
District Court			X <sup>2</sup>		6	Re-election for additional terms

8. Three of the judges run in partisan elections for 6 year terms then have to be re-elected for additional terms.

9. Louisiana judicial elections are partisan inasmuch as the candidates' party affiliations appear on the ballot. However, two factors lead a somewhat nonpartisan character to these elections: (1) primaries are open to all candidates; and (2) judicial candidates generally do not solicit party support for their campaigns.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS	INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission			
<b>MAINE</b>					
Supreme Judicial Court		X(G)		7	Reappointment by governor, subject to legislative confirmation
Superior Court		X(G)		7	Reappointment by governor, subject to legislative confirmation
<b>MARYLAND<sup>10</sup></b>					
Court of Appeals	X				See fn 11
Court of Special Appeals	X				See fn 11
Circuit Court	X				See fn 11
<b>MASSACHUSETTS<sup>11</sup></b>					
Supreme Judicial Court	X				to age 70
Appeals Court	X				to age 70
Trial Court of Mass.	X				to age 70
<b>MICHIGAN</b>					
Supreme Court				X <sup>12</sup>	8
Court of Appeals			X		6
Circuit Court			X		6
<b>MINNESOTA</b>					
Supreme Court			X		6
Court of Appeals			X		6
District Court			X		6
<b>MISSISSIPPI</b>					
Supreme Court			X		8
Court of Appeals			X		8
Chancery Court			X		4
Circuit Court			X		4
<b>MISSOURI</b>					
Supreme Court	X				1
Court of Appeals	X				1
Circuit Court				X	6
Circuit Court (Jackson, Clay, Platte, Saint Louis Counties)	X				1
<b>MONTANA</b>					
Supreme Court			X		8
District Court			X		6
<b>NEBRASKA</b>					
Supreme Court	X				3
Court of Appeals	X				3
District Court	X				3

10. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

11. Until the first general election following the expiration of one year from the date of the occurrence of the vacancy.

12. May be challenged by other candidates.

13. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

14. Although party affiliations for Supreme Court candidates are not listed on the general election ballot, candidates are nominated at party conventions.

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State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
NEVADA						
Supreme Court			X		6	Re-election for additional terms
District Court			X		6	Re-election for additional terms
NEW HAMPSHIRE <sup>15</sup>						
Supreme Court		X(G) <sup>16</sup>			to age 70	
Superior Court		X(G) <sup>16</sup>			to age 70	
NEW JERSEY						
Supreme Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
Appellate Division of Superior Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
Superior Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
NEW MEXICO						
Supreme Court	X				until next general election	See Footnote 17
Court of Appeals	X				until next general election	See Footnote 17
District Court	X				until next general election	See Footnote 17
NEW YORK						
Court of Appeals	X				14	See Footnote 18
Appellate Division of the Supreme Court	X				5	Commission reviews and recommends for or against reappointment by governor
Supreme Court			X		14	Re-election for additional terms
County Court			X		10	Re-election for additional terms
NORTH CAROLINA						
Supreme Court			X <sup>17</sup>		8	Re-election for additional terms
Court of Appeals			X <sup>17</sup>		8	Re-election for additional terms
Superior Court			X		8	Re-election for additional terms
NORTH DAKOTA						
Supreme Court			X		10	Re-election for additional terms
District Court			X		6	Re-election for additional terms

15. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.  
 16. The governor's nomination is subject to the approval of a five-member executive council.  
 17. Partisan election at next general election after appointment for eight-year term for appellate judges, six-year term for district. The winner thereafter runs in a retention election for subsequent terms.  
 18. Incumbent reapplies to nominating commission and competes with other applicants for nomination to the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.  
 19. Beginning in 2004, these elections will be nonpartisan.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
OHIO						
Supreme Court					6	Re-election for additional terms
Court of Appeals				X <sup>20</sup>	6	Re-election for additional terms
Court of Common Pleas				X <sup>20</sup>	6	Re-election for additional terms
OKLAHOMA						
Supreme Court	X				1	Retention election (6 year term)
Court of Criminal Appeals	X				1	Retention election (6 year term)
Court of Appeals	X				1	Retention election (6 year term)
District Court			X		4	Re-election for additional terms
OREGON						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
Tax Court			X		6	Re-election for additional terms
PENNSYLVANIA						
Supreme Court				X	10	Retention election (10 year term)
Superior Court				X	10	Retention election (10 year term)
Commonwealth Court				X	10	Retention election (10 year term)
Court of Common Pleas				X	10	Retention election (10 year term)
RHODE ISLAND						
Supreme Court	X				Life	
Superior Court	X				Life	
Worker's Compensation Court	X				Life	
SOUTH CAROLINA						
Supreme Court		X (L) <sup>21</sup>			10	Reappointment by legislature
Court of Appeals		X (L) <sup>21</sup>			6	Reappointment by legislature
Circuit Court		X (L) <sup>21</sup>			6	Reappointment by legislature
SOUTH DAKOTA						
Supreme Court	X				3	Retention election (8 year term)
Circuit Court			X		8	Re-election for additional terms

20. Although party affiliations for judicial candidates are not listed on the general election ballot, candidates are nominated in partisan primary elections.  
 21. South Carolina has a 10 member Judicial Merit Selection Commission that screens judicial candidates and reports the findings to the state's General Assembly. Since 1997, the Assembly is restricted to voting only on those candidates found qualified by the Judicial Merit Selection Commission. However, the nominating commission itself is not far removed from the ultimate appointing body, and cannot be considered to be nonpartisan as control over member nominations is vested in majority party leadership. Although most nominating commissions contain members appointed by the governor or legislature, no other commissions actually contain the governor or current legislators who have final approval over the candidate as voting members of the commission. In contrast, the Judicial Merit Selection Commission in South Carolina contains 6 current members of the General Assembly appointed by the Speaker of the House of Representatives, the Chairman of the Senate Judiciary Committee, and the President Pro Tempore of the Senate. State legislators also choose the remaining 4 members of the Commission who are selected from the general public.

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State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
TENNESSEE						
Supreme Court	X					until next biennial general election Retention election (8 year term)
Court of Appeals	X					until next biennial general election Retention election (8 year term)
Court of Criminal Appeals	X					until next biennial general election Retention election (8 year term)
Chancery Court			X		8	Re-election for additional terms
Criminal Court			X		8	Re-election for additional terms
Circuit Court			X		8	Re-election for additional terms
TEXAS						
Supreme Court			X		6	Re-election for additional terms
Court of Criminal Appeals			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
District Court			X		4	Re-election for additional terms
UTAH						
Supreme Court	X					First Retention election (10 year term)
Court of Appeals	X					general Retention election (6 year term)
District Court	X					election Retention election (6 year term)
Juvenile Court	X					3 years after Retention election (6 year term)
VERMONT						
Supreme Court	X				6	Retained by vote of General Assembly (6 year term)
Superior Court	X				6	Retained by vote of General Assembly (6 year term)
District Court	X				6	Retained by vote of General Assembly (6 year term)
VIRGINIA						
Supreme Court		X(L)			12	Reappointment by legislature
Court of Appeals		X(L)			8	Reappointment by legislature
Circuit Court		X(L)			8	Reappointment by legislature
WASHINGTON						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Superior Court			X		4	Re-election for additional terms
WEST VIRGINIA						
Supreme Court			X		12	Re-election for additional terms
Circuit Court			X		8	Re-election for additional terms

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
WISCONSIN						
Supreme Court			X		10	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
WYOMING						
Supreme Court	X				1	Retention election (8 year term)
District Court	X				1	Retention election (6 year term)

**V. ROBERT PAYANT**

815 Arlington Court  
Reno, Nevada 89509  
(775) 322-7412

My name is Robert Payant and I speak in favor of SJR 2 regarding the method of selection of justices of the Supreme Court and judges of the district court. The amendment to the constitution would also apply to judges of the intermediate court of appeal if such a court is established.

I have some personal experience with regard to judicial selection. I served for more than 24 years as a judge in Michigan and nearly 10 years as dean and president of the National Judicial College. Each year I met several thousand judges each year at the judicial college and in asking many of those men and women from states like Michigan and Nevada what they liked least about their judicial work they invariably said it was running for office and most specifically to personally or through a committee raise the money to conduct a judicial campaign.

Those likely to provide funds to the judges or those aspiring to be judges are lawyers, law firms and those who likely have personal or commercial reasons to want a sympathetic voice on the bench. Unlike the elections of governors and legislators whose task is to consider the policy questions and tell the voters what their position will be on issues which come before them, judges are bound to make their decision on the facts and the law and to set aside any considerations of their upcoming election or indicate a pre-decision on controversial issues.

In addition to American judges who attend the judicial college, each year there are substantial delegations of judges from foreign lands who come to study our judicial system, structure of the courts and judicial selection. I can tell you that these judges are absolutely flabbergasted to learn about the election system for judges in half our states. The idea the judges would be beholden OR APPEAR TO BE BEHOLDEN to the lawyers who will be appearing before them is indeed foreign to them. When some have visited here during campaign season and have seen the billboards touting judge candidates or listen to sometimes outrageous television commercials attacking opponents they can scarcely believe it.

While I am not suggesting that judges in our state or other places are corrupted by the election system, it is the appearance of impropriety that has caused so many states to make the change to merit selection. The text of the proposal before you seems to cover well the concern that the selection commission will be balanced and non-partisan. I urge your favorable vote as the first step toward allowing our citizens to consider this change



My name is Alecia Biddison. I am a managing partner of The Busick Group and an invited participant in the drafting of SJR2. The Busick Group is a government relations company that has a specific interest in achieving judicial reform in Nevada.

Over the past several years, from one end of the state to the other, some of Nevada's judges have gained national notoriety. And while the media's attention on Nevada's judges may not reflect the many qualified, professional, and capable judges seated, it would appear the media and many Nevadans have lost faith in the judiciary. And whether this is simply a perception problem as many may suggest or a reality, change is needed and the time is right.

We believe a good beginning for reform can be achieved by changing how the people of Nevada qualify, seat, and retain their judges. We strongly support Senate Joint Resolution 2 and have committed to forming a Political Action Committee to raise the necessary funds to educate Nevadans on the importance of changing the state constitution to support a modified Missouri plan for Nevada.

Some thirty-five states are operating under a Missouri or modified version of the Missouri plan. While the plan is not without its own challenges, its benefits far outweigh the current system in Nevada.

Some of the benefits gained from enacting a modified Missouri plan for Nevada include:

- Insulates prospective and sitting judges from the burdens and pressures of costly and competitive open elections thereby changing the perception of the people;
- Emphasizes individual qualifications for selection instead of Political power or influence;
- Provides a screening process whereby applicants apply for judicial seats and the best qualified candidates are recommended for the selection to the bench;
- Promotes judicial stability through a review process;
- Allows for accountability and democratic participation of the people By requiring that judges stand for retention elections.

In a study published by the American Bar Association in July 2000, <sup>3</sup>The ABA has supported and continues to support a merit-based appointive system for judicial selection.<sup>2</sup>

59 Damonte Ranch Parkway, B159  
Reno, Nevada 89512  
775.315.0000

Assembly committee: Judiciary

Exhibit E P.1 of 2 Date 05/01/07

Submitted by: Alecia Biddison

Retired Chief Justice O'Connor says that electing judges is a fundamentally misguided idea. If there must be elections, she opines, the "Missouri Plan" is the better way to go.

Before becoming the Federal Director of Homeland Security, Governor Tom Ridge strongly supported the adoption of a merit selection system in Pennsylvania. Citing the unique nature of the judiciary that distinguishes judicial elections from executive and legislative elections.

Some may suggest that moving to a modified Missouri plan with a retention vote requiring judges to attain 60% of the yes vote's is too much. However, in Tennessee in 2006, all of the judges submitted for approval received an affirmative vote of at least 70 percent. 27 judges (three Supreme Court and 12 each on the Court of Appeals and Court of Criminal Appeals) Others may claim that minorities and women will be adversely impacted by a retention vote. However, in 1993, an American Judicature Society study found that the largest proportion of African Americans (32%) and women (35%) attained judicial office through a merit plan.

Retention elections are intended to eliminate the elements that characterize contested elections. The judge runs only against himself and is evaluated by the voters based on his record instead of his party affiliation, popularity, or campaign promises. The absence of an opponent reduces the pressure of having to raise large sums of money and directly reduces the perception issues associated with a costly campaign.

Moving to a modified Missouri Plan for Nevada is making a meaningful commitment to judicial reform and accountability by allowing for voter input, increasing public awareness of the operations of the judicial system, and preventing political cronyism from embedding itself in the administration of justice

In this time where money and politics create the perception that our judiciary can be bought and paid for through the open election process, approving SJR2 is an appropriate solution to addressing the competing interests of judicial independence and judicial accountability.

Alecia D. Biddison

April 5, 2007

# Sallyport

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## Analyzing State Supreme Court Cases

**For political scientists and other scholars  
hungering for information on state supreme court  
decisions, Rice University's State Supreme Court  
Data Project is a free all-you-can-eat buffet.**

The project boasts an online analysis of every state supreme court case heard from 1995 through 1998 in all 50 states. Each of the more than 30,000 cases in the database has been coded to facilitate an extensive variety of searches, such as biographical information about a judge, the judge's vote in a case, the outcome of a case, legal issues raised, and characteristics of litigants.

"The states have an awesome responsibility for resolving the vast majority of the nation's legal disputes," says Paul Brace, the Clarence L. Carter Professor of Political Science at Rice and principal investigator for the project. "Unfortunately, our knowledge of state courts, including courts of last resort, is quite limited."

With nearly \$1 million in grants from the National Science Foundation (NSF), Brace and co-principal investigator Melinda Gann Hall at Michigan State University spent the past six years collecting and coding data on state supreme courts to meet the need for such pivotal details. State courts decide more than 99 percent of the litigation in the United States, interpreting not only state laws but also federal laws.

Fall 2005  
VOL.62, NO.1



"We want this  
to be a  
permanent  
data archive  
that can serve  
as  
infrastructure  
for addressing  
fundamental  
questions  
about law and  
politics."

—Paul Brace

Assembly committee: Judiciary

Exhibit F P. 1 of 3 Date 05/01/07

Submitted by: Lynn Chapman

3/7/2007

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“With increasing state discretion over matters of public policy, the power of state courts should be increasing, making studies of these institutions particularly timely,” Brace says. “Without understanding the nature of these institutions and the states, we are left with a very incomplete understanding of American politics.”

Unlike the unique U.S. Supreme Court, whose justices are appointed for life and don’t have to worry about decisions being reversed, Brace notes that most state supreme court judges are elected and linked directly with voters and public opinion.

“Whether or not judges are elected [vs. appointed] has an impact on the kinds of decisions they make,” Brace says. Using the State Supreme Court Data Project, scholars can study the effects of judicial elections on judicial behavior by comparing the dockets of appointed versus elected supreme courts, how the composition of a court reflects a state’s liberal or conservative tendencies, and how public opinion affects judicial decisions.

Brace and Hall trained and employed undergraduate and graduate students at Rice and Michigan State to code more than 200 details for each case. Additional NSF support was obtained to fund undergraduate and graduate research related to the project. One of the biggest challenges during the project’s early phase was how to develop a template that systematized the collection of data to reduce mistakes. “Intercoder reliability was incredibly high,” Brace explains, noting that the software included hint buttons to guide coders through the cases and help them look at the information they needed to enter in the database. The data entered by coders on the software template went

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straight into a spreadsheet, which avoided errors that might have resulted from copying data manually from paper.

Biographical information on more than 400 state supreme court judges is contained in the database, and although the database ends with court cases from 1998, Brace is hopeful that private funding will support extension of the project on an ongoing basis. "This would allow longitudinal studies of how state supreme courts change over time," he says.

"We want this to be a permanent data archive that can serve as infrastructure for addressing fundamental questions about law and politics," Brace adds. "These data will be of interest not only to academicians but also to government officials, practicing attorneys, and concerned citizens interested in the activities of the states' highest courts."

To view the State Supreme Court Data Project, go to <http://www.ruf.rice.edu/~pbrace/statecourt/index.html>.

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**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session  
May 18, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:24 a.m., on Friday, May 18, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Assemblyman William Horne, Vice Chairman  
Assemblywoman Francis Allen  
Assemblyman John C. Carpenter  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Susan Gerhardt  
Assemblyman Ed Goedhart  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman Harry Mortenson  
Assemblyman John Ocegüera  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**GUEST LEGISLATORS PRESENT:**

Steven A. Horsford, Clark County Senatorial District No. 4



resident and has no one willing to serve as a guardian to qualify for the services of a public guardian. You will find that amendment on page 6 of your work session document. For voting purposes in this case, the Committee would have to make a choice between amendment number 5 and amendment number 2 because they are mutually exclusive.

**Chairman Anderson:**

The Chair likes number 5. I am not pleased with what happened with the guardianship bill that we sent out of this House. People promised they would work out a compromise, but when the bill got to the Senate they backed out of that promise. I thought seriously about adding all of the compromised language back into this bill, but it would potentially harm Senator Mathews' bill. Amendment number 5 in the work session document which changes an "or" to an "and" will take care of some of the issues we are concerned about.

**Assemblyman Carpenter:**

I agree that amendment number 5 is the way to go. I liked this bill when I read it, especially having some experience as a county commissioner.

ASSEMBLYMAN HORNE MOTIONED TO AMEND AND DO PASS  
SENATE BILL 157 (R1).

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

**Chairman Anderson:**

The floor assignment for this bill will go to Assemblyman Segerblom. Let us take a look at Senate Joint Resolution No. 2.

**Senate Joint Resolution No. 2: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)**

**Jennifer Chisel, Committee Policy Analyst:**

Senate Joint Resolution No. 2 (Exhibit G) was presented by Senator Raggio on May 1st. This measure amends the method that judges and justices are selected in Nevada. The provisions are based on a modified "Missouri Plan." In this plan, the initial appointment is made by the Governor from a list of candidates chosen by the Commission on Judicial Selection. For a judge to be retained he must stand in a retention election and receive at least 60 percent of the vote. This measure must be approved in identical form during the 2009 Legislative Session and then be submitted to the voters for approval in the 2010

general election. As Chairman Anderson mentioned, there was a lengthy hearing with substantial testimony both in favor and in opposition of this measure. The Committee has no amendments to consider.

**Chairman Anderson:**

There is some level of comfort in knowing that this measure has to go through the legislative process and to the voters. I prefer voter selection and I do not think it is going to change the behavior of judges. My favorite political philosopher and maybe my favorite president is Thomas Jefferson. He maintained that if the public made poor choices, it was their responsibility and that no one should take away their opportunity to vote. On that philosophy, I will not support the legislation.

**Assemblyman Carpenter:**

I have the most respect and admiration for Senator Raggio; I cannot support this measure because it takes away the right of the people to choose and to vote and puts too much power in the hands of the Governor. I will not be supporting the measure.

**Assemblywoman Allen:**

While I have been quite vocal in the past in this Committee in regards to the need to select judges rather than elect them to remove the monetary contribution portion of becoming a judge, I am not happy with the proposed resolution as it is drafted. The 60 percent requirement concerns me. I feel torn, but have decided to vote no.

**Assemblyman Ohrenschall:**

As I look at the resolution, the appointed judge would then have to run for retention election and there was no guarantee that the judge would not then fundraise for that retention election to get the 60 percent vote for retention. I do not see S.J.R. 2 taking money out of judicial selection and retention. I concur with my colleague from Summerlin.

**Assemblyman Cobb:**

I personally believe that judges should be appointed and we should try to take the money out of the system. It is an unseemly process for a judge to have to go and ask for money from the people who then appear before that judge. I do not mean to impugn any of the judges that currently sit on the bench, but it is a process where we should be taking the money out of the system. This may not be a perfect resolution to that, but it will help maintain a good and independent judiciary. Furthermore, I will vote for this measure to put it on the ballot so that the people can choose for themselves whether or not they wish to have judges appointed or they wish to elect them.

**Assemblywoman Gerhardt:**

I have to agree with my colleague; this really needs to go to a vote of the people. They need to be the ones to decide, and in that spirit I will be supporting the bill.

ASSEMBLYMAN CONKLIN MOTIONED TO DO PASS  
SENATE JOINT RESOLUTION NO. 2.

ASSEMBLYWOMAN GERHARDT SECONDED THE MOTION.

THE MOTION FAILED. (ASSEMBLYMEN ALLEN, ANDERSON,  
CARPENTER, GOEDHART, HORNE, MABEY, MANENDO,  
OCEGUERA, AND OHRENSCHALL VOTED NO. ASSEMBLYMEN  
COBB, CONKLIN, GERHARDT, MORTENSON, AND SEGERBLOM  
VOTED YES.)

**Chairman Anderson:**

Moving on, I would suggest that we amend Senate Bill 202 (1st Reprint) (Exhibit H) to include some things. Ms. Chisel, could you explain.

**Senate Bill 202 (1st Reprint): Makes various changes relating to domestic relations. (BDR 11-215)**

**Jennifer Chisel, Committee Policy Analyst:**

This was Senator Washington's bill to codify common law factors that a court must consider when determining an award of alimony. There were concerns raised on behalf of the Nevada Network Against Domestic Violence which were resolved with an amendment that was submitted by P. K. O'Neill of the Records and Technology Division. The Committee heard testimony that the amendment was worked out and supported by all the parties involved. This bill is substantially similar to Assemblyman Carpenter's Assembly Bill 52 which the Senate Judiciary Committee did Amend and Do Pass. However, it has not been reported out of the Committee yet.

**Chairman Anderson:**

I suggest that we Amend and Do Pass S.B. 202 (R1) to include Assemblyman Carpenter's name and, in addition, the amendments proposed here, while we wait and see what happens with the other bill. If Assemblyman Carpenter's bill comes to us in an acceptable format then we will have a clean bill and will concur with the amendments that were made there. If there are additional amendments that are placed into it, we will not concur. Then we will leave this measure to solve the issue.

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This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or [library@lcb.state.nv.us](mailto:library@lcb.state.nv.us).

**Committee Action:**

Do Pass \_\_\_\_\_

Amend & Do Pass \_\_\_\_\_

Other \_\_\_\_\_

This measure may be considered for action during today's work session.

**SENATE JOINT RESOLUTION NO. 2**

**Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)**

**Sponsored by: Senators Raggio, Hardy, Care, Coffin, Carlton, et al.**

**Date Heard: May 1, 2007**

**Fiscal Impact: Effect on Local Government: No**

**Effect on the State: No**

Senate Joint Resolution No. 2 proposes to amend the *Nevada Constitution* to provide for the initial appointment of Supreme Court Justices and District Court Judges, followed by a retention election by the voters in Nevada. An initial appointment is made by the Governor from candidates chosen by the Commission on Judicial Selection. This appointment expires on the first Monday of January following the general election that occurs at least 12 months after appointment.

Upon declaration of candidacy for retention, a justice or judge must undergo a performance review by the newly created Commission on Judicial Performance. The Commission must issue a report to the public of its review and recommendation prior to the retention election. If 60 percent of the votes cast are in favor of retention, the justice or judge serves a six-year term and is subject to another retention election and performance review at the end of each six-year term. If he does not declare his candidacy or receives less than 60 percent of the votes cast, the vacancy is again filled through the appointment process.

**Amendments:** There are no amendments to consider for this measure.

Assembly committee: Judiciary

Exhibit G P. of Date 5/18/07

Submitted by: Jennifer Chisel

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session  
May 23, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 9:06 a.m., on Wednesday, May 23, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Assemblyman William Horne, Vice Chairman  
Assemblywoman Francis Allen  
Assemblyman John C. Carpenter  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Susan Gerhardt  
Assemblyman Ed Goedhart  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman Harry Mortenson  
Assemblyman John Ocegüera  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**GUEST LEGISLATORS PRESENT:**

Senator William Raggio, Washoe County Senatorial District No. 3  
Assemblywoman Barbara Buckley, Clark County District No. 8

Minutes ID: 1333



**STAFF MEMBERS PRESENT:**

Jennifer M. Chisel, Committee Policy Analyst  
Risa Lang, Committee Counsel  
Darlene Rubin, Committee Secretary  
Matt Mowbray, Committee Assistant

**OTHERS PRESENT:**

Sherry Powell, representing Ladies of Liberty  
Alecia Biddison, Managing Partner, The Busick Group  
Vinson Guthreau, representing Nevada Association of Counties  
Laurel Moser, Deputy Clerk, Washoe County Clerk's Office  
Alan Glover, Clerk/Recorder, Carson City

**Chairman Anderson:**

[Meeting called to order. Roll called.]

We have posted this as a work session; however, there are two bills that are still in the province of the Committee; one is here by virtue of a waiver (Exhibit C). Madam Secretary will have the waiver for the joint standing rule for Senate Joint Resolution 2 of subsection 3 of the Joint Standing Rule Number 14.3 that is a requirement of final committee passage of the Second House by the 103rd day. That was granted on May 21, 2007 and signed by the Majority Leader of the Senate, Senator William Raggio, and the Speaker of the Assembly, Assemblywoman Barbara Buckley. Please place it in the official record for the day.

The other piece of legislation is ours by the fact that it was exempted, and we have not yet found resolution.

Let us turn to further discussion on Senate Joint Resolution 2.

**Senate Joint Resolution 2: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)**

This is the bill we last discussed on Friday, May 18, 2007, and which failed to reach the necessary majority of the Committee for a Do Pass. We will now open S.J.R. 2 and ask you, Senator Raggio, if you have additional information you would like to present to the Committee. I note you have a handout (Exhibit D) which you have given to the Committee and which we will ask be

put in the record. Is there any additional information you would like to get on the record?

**Senator William Raggio, Washoe County Senatorial District No. 3:**

Let me express my appreciation to you as Chairman and to this Committee for your agreement to again hear this measure. I also express my appreciation to Speaker Buckley for agreeing to sign the waiver to allow this to be heard once more. Speaker Buckley has indicated to me that she supports this measure and that was the reason she was willing to sign a waiver resolution. As you know, this has to pass two legislative sessions and then would go on the ballot for voter approval or disapproval.

The first page of the material I submitted is an editorial dated April 11, 2007, published by the *Reno-Gazette Journal*. It clearly states the position that I spoke to you about. This is probably a vast improvement over previous proposals to adopt something akin to what is termed the "Missouri Plan" for the initial selection of judges, Justices of the Supreme Court, and judges at the district court level. We do this now for filling appointments to those positions and this would apply to the initial selection of judges. For those who have a strong feeling that somehow this takes away the right of voters, let me reiterate that under this proposal there is a complete process for the initial selection through a commission. There is also the retention election whereby voters will have the opportunity at the end of a term of a judge who wishes to seek reelection, to review that judge, to review the record, and a report issued to the public. The public then has the right to determine by ballot whether or not that judge should be retained. Under the provision, the judge would have to receive 60 percent of the vote in order to be retained; otherwise, the selection process would apply again.

As the editorial referred to previously indicates, in most cases appointed judges have probably been better judges. That is what I believe, and I have practiced law in excess of 50 years. I do not say that in a pejorative way about all judges who were elected, but the overall record would indicate that the judges who have gone through the appointment process probably overall have been superior. Their qualifications and their records have been examined by the appointing authority, that is, in the case of filling vacancies.

Page 3 of my handout is an article for your perusal from the *Las Vegas Sun* dated March 20, 2007, which references a lot of the issues that have taken place. Those of you who represent Clark County have particular reason to be concerned about some of the judges and some of the perceptions, particularly with the need to go out and seek contributions. Campaign contributions for judges come from limited sources: lawyers, law firms, litigants, and potential

litigants, for the most part. Unlike the rest of us who go to many areas to collect campaign contributions on a partisan basis, judges who are nonpartisan are limited as to what they can promise I would hate to see judges have to promise they were going to do something one way or another on issues to get campaign contributions, but there is that perception. There have been examples of judges selected by the election process who probably have not measured up to some of the standards that would otherwise be in play in an appointment process. I am not asking you today to give final approval, but I am asking you to at least let the measure pass the 2007 Legislative Session. It will also have to pass the 2009 Legislative Session. At some point, if that happens, the voters of this State would have the opportunity, as they did previously on the issue, to fill vacancies to adopt a policy to do so with the initial selection.

Attached to the handout is the list of 24 states that have some type of retention election such as that proposed here. The one we have here is superior to all of those processes in place in the other states.

**Chairman Anderson:**

Are there any questions? [There were none.]

**Assemblywoman Barbara Buckley, Assembly District 8:**

I wanted to come today to indicate my support for S.J.R. 2 and to thank this Committee and especially you, Mr. Chairman, for agreeing to look at the bill again. Senator Raggio and I come from different parts of the State; we started our legal careers in much different venues. I represented indigents in civil cases through Legal Aid. Senator Raggio was a prosecutor. Despite the paths of our legal careers, we share a keen love and respect for our legal profession and growing concern about the notion that justice is for sale. That is what we see more and more within our profession, that lawyers and special interests go to the judges before whom they practice to ask for campaign contributions. More and more seasoned lawyers, lawyers that you would be proud to seat on the bench, choose not to run because most of the public, especially in the larger communities, do not have the time to ascertain who would be the better jurist. Instead, it becomes more of a popularity contest, not about qualifications, not about the even-handed application of justice, but a system where popularity rules and those who gain the most campaign contributions from those who appear before them tend to win.

I know that in an appointed system you can point to examples where an elected judge may be a better jurist than an appointed judge; it is not to say that does not happen occasionally. But more and more throughout the State we are seeing that jurists with experience, with thoughtfulness, with a track record, with a knowledge of the cases that come before them are not being elected to

our seats. Who is paying that price? The public—those whose lives are at stake in the criminal proceedings, those whose livelihoods are at stake in civil proceedings—bears the burden.

I come here today as someone who loves their profession and wants to see the law respected, and to know people feel they can have a fair day in court. Our system currently is not working and by allowing the people to decide whether this will lead to a better system is an opportunity the people should be given a chance to weigh in on.

**Sherry Powell, representing Ladies of Liberty:**

We are a victims' organization. I have been watching this bill very closely because it is one close to home and very important. I am a paralegal; I work with many great attorneys, judges, and district attorneys from all walks of the legal system. I have also had a few bad experiences. I noticed a concern with the 60 or 70 percent retention, which, when you are not running against someone else, you should be able to retain—perhaps even 80 percent. Once you are actually in that position, you have done your job, you have shown the public what you can do, why would you not be able to retain that percentage?

I was able to go before the Judicial Selection Committee during Governor Guinn's term, and they were talking about rural communities not having the availability of judges. One of the appointees was from Elko. I lived in Elko for 25 years; half of the selections were bar members, the other half were appointees by the Governor. The committee listened to me about one particular person who was running for judge, a person I did not support. The committee also listened to the opposition against a person I did support. The selection process and the fact that the public is notified in the press of who is vying for each position, gives the public the opportunity to opine in writing or publicly; I did both. It is a great process, and I felt I had an excellent opportunity to express my views more strongly than by merely checking a ballot.

**Assemblyman Horne:**

You brought up the retention rate of 60 to 70 percent if they were running unopposed. Would you be opposed to that percentage being lower? Our judges are often called to make rulings on unpopular measures and in retention elections; if that were to occur, I foresee a campaign against a particular judge because of a ruling he had made that may not have been a popular one. Now this judge is not running against an opponent but against an opinion. This judge is defending his record against a campaign saying he is not a good judge, the judge who let a bad person go free, or whatever the issue, and that judge may not get the 60 percent, not because the decision was wrong, but because it

may have been unpopular. Thus, that may be a problem with the 60 or 70 percent retention.

**Sherry Powell:**

In my career, I have had to handle some cases that went against my beliefs. However, as a paralegal, I must represent the client to the best of my ability. Judges and attorneys are allowed to give legal reasons why a particular decision was made. As a citizen, I would understand that dilemma. I understand the dilemma of a murder case where the judge has to go by the *Constitution*. The citizens of this State are looking toward constitutionality. There are hard decisions, even with the select few cases where not all my friends agreed with me. I would have to tell them that I had to do a certain thing because it was my job. My job is to make a case for them and abide by the *United States Constitution* and the laws of the State of Nevada. Therefore, because as a judge I would have the ability to explain why I made a certain decision or what laws applied, retention would not be that difficult. Laws are black and white, and people are losing faith in our system. We need to step up and give them more faith.

**Alecia Biddison, Managing Partner, The Busick Group:**

I was an invited participant in the drafting of S.J.R. 2. My company and I strongly support this bill and we are committed to forming a political action committee to help educate Nevadans as to why this bill is important and why this change is necessary.

On Monday, May 21, 2007, I sent you an email (Exhibit E) entitled "S.J.R. 2 Follow up on Comments—Why a modified Missouri Plan for Nevada?" I want to address Mr. Horne's comment about the 60 percent, and any other Committee members who may struggle with that. Currently when you run in an election, you are running against yourself, against an opponent, and against none of the above. There are actually three opportunities for someone to vote against you. They could choose to not vote at all. In a retention election I have two choices: I have a choice to vote for you or not vote for you. I am not out there selling my political position, or trying to get campaign contributions by promoting a bias of some sort or a political agenda. I am running against my record which is presented in a review format because a review will be published stating how my performance has measured up—what are my preemption rates, my appeals rates—and will give a report card of my performance. Thus, I do not have to stand on the merits of my political bias. I can stand on the merits of that which I have done in the years leading up to my retention election.

In Tennessee in 2006, there were 27 judges who ran in retention elections. All 27 received at least 70 percent of the vote. There were three Supreme Court

judges and 12 judges each for the Court of Appeals and the Court of Criminal Appeals. That is evidence that it is possible, that it is doable, and that it is being done. Can 60 percent be attained? Absolutely it can when 70 percent is being attained.

I will close unless there are any other questions.

**Chairman Anderson:**

There are a couple of questions. You said the voter had three choices, one of which was not to vote. In determining the 60 percent, does that include the people who voted on this particular section or the number of people who voted in the overall ballot? If I choose to skip this section of the bill, will that be considered to be a "no" vote because they have not had 60 percent of the total number of votes cast in the election? Or is it going to be 60 percent of those people who voted either "yes" or "no"? How do you perceive it to be?

**Alecia Biddison:**

I am not following you.

**Chairman Anderson:**

There are two different questions when you come to the ballot. Is it going to be the "yes" votes versus the "no" votes in determining the 60 percent? Or is it the "yes" votes versus the total number of votes cast for that election?

**Alecia Biddison:**

I would need to review the bill again to determine the exact language as to how it was constructed.

**Chairman Anderson:**

We have heard testimony from Ms. Powell which restated the question relative to her experience with the judicial panel. That is, her opportunity to know who was being considered. That is not in the bill, as I read it; you will not know who the potential candidates are going before the Judicial Commission; likewise, the notification inviting the public to give testimony is not in this bill.

**Alecia Biddison:**

I understand that. That is part of the commission's operating procedure. The commission is also not defined in this bill because the commission and its functions already exist within the statutes.

**Chairman Anderson:**

The commission and how it functions is open to the interpretation of the court and not of the Legislature. We will have to check on that.

**Alecia Biddison:**

As it stands now, the process that currently applies to how judicial applicants for appointed seats fill a vacancy would be mirrored in this process. Specifically, there would be notification via the media that there was a vacancy, individuals would be allowed to apply for that vacancy, the media would be notified of the three candidates recommended, and the public would have the ability to petition the Governor which candidates they support or oppose.

**Chairman Anderson:**

Is that your hope?

**Alecia Biddison:**

That is how the process is currently.

**Chairman Anderson:**

We need to find out why it was not included in this bill. Are there any questions?

**Assemblyman Mabey:**

I want to clarify the part about what would be on the ballot: If I am the judge, the ballot will say "yes," he should be retained or "no," he should not be retained. There will be two spots on the ballot—"yes" or "no." Correct?

**Alecia Biddison:**

That is correct.

**Chairman Anderson:**

Those people who go by the ballot will be assumed to be in support, correct?

**Alecia Biddison:**

You would presume, unless that judge has been a poor performer, that judge would be retained.

**Chairman Anderson:**

If they do not vote, the net effect of skipping that section of the ballot is a "yes" vote. The only way to eliminate it is to vote "no."

**Alecia Biddison:**

Correct. That has been successful.

**Assemblyman Mabey:**

As I understand it, they will just count the number of "yes" votes and count the number of "no" votes. If the judge obtained 60 percent then he would be retained.

**Chairman Anderson:**

If you were confused about the issue and skipped over the question, the effect would be a "yes" vote because you are not voting against the person.

**Assemblyman Mabey:**

I do not see it that way. I think it would just be the yes versus the no votes.

**Chairman Anderson:**

Are there other questions? [There were none.]

On Friday, May 18, 2007, a Do Pass motion put forth by Assemblyman Conklin and Assemblywoman Gerhardt failed here in Committee. The other affirmative votes on the issue which failed were by Assemblymen Cobb, Segerblom, and Mortenson. Therefore, a motion to reconsider cannot come from any of those five because they were not on the prevailing side. Ten votes are needed for a motion by our Standing Rules and by Rule 161.4 of *Mason's Manual*.  
[Opened the work session on S.J.R. 2.]

If any of you have amendments to propose I would suggest that you get them into writing so that you can propose them to the Committee and to the primary sponsor, if we are to move the bill out of Committee with an Amend and Do Pass motion, which will keep it alive and put it back in the Senate. An Amend and Do Pass motion does not require a motion to reconsider because it is a new motion not previously considered. The Chair is still uncertain as to what the Committee's feeling is.

**Assemblyman Segerblom:**

Right now we need someone who voted against the bill to make a motion to reconsider and if that motion were made then everybody could vote on it. If I receive ten votes, then we could go further and make an amendment to the bill or do whatever we wanted to do.

**Chairman Anderson:**

There is only one motion that requires a motion to reconsider and that would be the motion that failed. To keep ourselves in the clear, the whole process should receive that kind of motion to reconsider. A different motion—Amend and Do Pass, for example—would not require a motion to reconsider because it is substantially different than the original motion; an Amend and Do Pass motion is

by its nature substantially different. If there is a motion made by someone who voted on the prevailing side, anyone other than the five members who I named can move.

**Assemblyman Mortenson:**

Having voted on the prevailing side, I move reconsideration of the action we took on S.J.R. 2.

**Chairman Anderson:**

Mr. Mortenson, you did not vote on the prevailing side. You voted "yes" on the bill and the bill failed on a five to nine motion. The prevailing side would be the nine who voted the other way.

The Chair has a couple of questions, but I want to leave the opportunity for those who are thinking of developing amendments or have ideas about developing them.

**Assemblyman Conklin:**

Mr. Chairman, do we have to move this bill today? Do we have some time to discuss it?

**Chairman Anderson:**

We do have some time.

The waiver that we have that has been submitted and signed by the Majority Leader of the Senate and Speaker of the Assembly waives us from the rule in subsection 3 of Standing Rule 14.3, relative to out of final committee of the Second House. On Friday of this week, all bills from the Assembly must have cleared the Assembly; we are not waived from that rule so that means that we must make the decision—and I presume we can make it Friday morning. If the amendments were in proper form and this Committee did take such action, then we would be able to move forward. It would appear that we are going to be holding for awhile.

**Assemblywoman Allen:**

As I indicated two years ago in this Committee, I take great issue that we should not have popular election for judges, and I still firmly maintain that position. My problem is that I am not in support of the way S.J.R. 2 is currently drafted. If this Committee is going to amend the bill, I would ask to be a part of whatever working group is put together between now and Friday so that some of my concerns are addressed. In the interim I read just about everything in print on the topic. I think we can make it better, and I am willing to commit to doing that.

**Chairman Anderson:**

I was not anticipating putting together a working group. If you are of a mind to do so informally that would be an option to you. I have some feelings about it, and I want to explore those with the Research Division and the Legal Division to see whether there are other possibilities for this bill.

**Assemblyman Manendo:**

We heard testimony again that this will take money out of the campaigns for judges, and I still think that is an issue that we need to look at. Judges running to be retained still have to campaign, and they still will continue to raise funds and continue to spend money. I wonder if we can have the Research Division look into the average cost to run in the large counties and statewide in order for this Committee to have some understanding of such costs. I have not seen any information that indicates this bill would take away the fund-raising aspect of the campaigns.

**Chairman Anderson:**

The questions for the Research Division would be to look at four different counties: the costs to run for election in Clark, Washoe, Elko, or Carson City, and the less populated counties so there is enough variation. Another part of that question is how many of the judges in the last three elections faced an opponent in those same counties. The issue I am still concerned about is the Judicial Select Committee process and who controls it. Is it controlled by the courts, or is it a legislative mandate as to public notification? If it is controlled by the courts, they could appoint and then cut the public out. I am not going for that.

**Assemblyman Ohrenschall:**

I raised issue with some of the witnesses earlier who implied that voters are not as qualified to make these appointments or selections. We can all point to elected judges and to appointed judges who have turned out badly. Right now in Las Vegas there is an elected judge who has received a lot of bad publicity. During the late 1970s, President Carter's administration instituted merit appointments to the federal bench. Many of us may remember that one of his merit selections from Nevada to the United States District Court was the late Harry Claiborne, who went on to become a federal felon, was impeached and convicted by the Congress, and brought a great deal of shame on Nevadans. Accordingly, I tend to raise issue with some of the earlier comments.

**Chairman Anderson:**

Are there other comments or observations? [There were none.]

I will close the hearing on S.J.R. 2.

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MAY 22 2007

74th Legislative Session  
**Waiver of Joint Standing Rule**

**A Waiver requested by:** William J. Raggio

**FOR:** Senate Joint Resolution No. 2

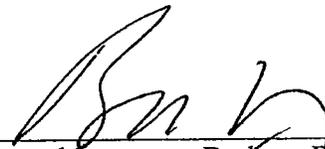
**To Waive:**

**Subsection 3 of Joint Standing Rule No. 14.3** (out of final committee of 2nd house by 103rd day)

**Has been granted effective:** May 21, 2007



Senator William J. Raggio  
Majority Leader



Assemblywoman Barbara Buckley  
Speaker

**Assembly committee:** Judiciary

**Exhibit** C **P.**      **of**      **Date** 5/23/07

**Submitted by:** Legislative Counsel

Waiver ID: 6



**Please return completed form to Legislative Counsel.**

(Original: Attach to bill cover. Copies: Deliver to Secretary of Senate, Chief Clerk of Assembly and History Clerks.)

# Let voters decide whether judges should be appointed

April 11, 2007 Reno Gazette Journal

It is always difficult to ask the voters to give up their right to vote -- whether for purely professional positions such as state controller or, as state Sen. Bill Raggio, R-Reno, has suggested, district and Supreme Court judges.

More often than not in Nevada, the voters have chosen to hold onto their vote, even for offices to which they pay little attention when election time rolls around.

In the case of judges, however, Raggio makes a compelling case.

The long-time legislator, who also was Washoe County district attorney, again this session has proposed that Nevada adopt a modified version of the Missouri Plan for choosing judges. Under his proposal, Senate Joint Resolution 2, judges for district courts and the state Supreme Court would be appointed by the governor from a list of three recommended by a judicial selection committee. Those judges would go before the voters, without an opponent, after a year in office to determine whether they should be retained.

Most judges in Nevada are, in fact, appointed by a governor. That's the constitutional system for filling vacancies. Rarely is there a vacancy for voters to fill. The judges then must campaign for the office at the next election. Sometimes they have an opponent, as happened in Washoe County last year; sometimes they get to run unopposed.

Raggio and many others in the state want to eliminate the political campaign, and the need for judicial candidates to raise campaign funds -- usually from the same people who are most likely to appear before them with legal cases.

Studies by the Progressive Leadership Alliance of Nevada, which often is on the opposite side of issues from Raggio, support his case against judicial campaigns. From 1998 through 2002, a PLAN study found, successful candidates for the Supreme Court raised more than \$1.5 million for their campaigns; two-thirds of the money came from the gaming industry or lawyers and lobbyists who had recent cases before the Supreme Court.

Numbers like that make some Nevadans wonder whether justice is for sale in the state. At the least, it makes them cynical about how the system works and who benefits from it.

Raggio's proposal, which, as a constitutional amendment, would have to be approved by the Legislature this year and again in 2009 before it went to the voters in 2010, wouldn't take the voters out of the picture. It simply would take some of the worst aspects of politics out of the

process. (Politics would not -- could not -- be taken completely out of it because governors are political animals.)

It's not a perfect plan, but it's better than the current system. The Legislature should give the voters the chance to decide for themselves.

Assembly committee: Judiciary

Exhibit 2 P. of Date 5/23/07  
Submitted by: Senator Raggio



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Today: June 11, 2006 at 7:34:2 PDT

## Jon Ralston outlines the need for Nevada judges to be appointed

In the space of three days and a few thousand words, the Los Angeles Times has pulled back the sheen that civic leaders have spent years earnestly putting over Las Vegas, removing the beautiful illusion of a glistening, evolving city and replacing it with the ugly reality of an incestuous, corrupt backwater.

The newspaper's investigative series - "Juice vs. Justice" - is the product of years of research and interviews, replete with telling vignettes and documentary evidence of how relationships and money pollute the valley's judicial system.

Las Vegas, in the words of the series, is a "juice town," which may generate Louis Renault-like sarcastic exclamations but still reinforces an image of the city and state as a Third World country, ruled by sin and sordid behavior, unfit for inclusion in respectable society.

Like many others who call Southern Nevada home, I recoil at the prospect of the snickering that the story will generate across the country, where any attempt to be taken seriously will be impaired and where ne'er do wells who didn't do well here will leap to rationalize their lack of success because of the soiled system. But unlike many others, I won't insist the story is exaggerated, twisted, distorted.

For I come here not to bury Las Vegas nor to praise its honest lawyers and judges. I come to exploit this unfortunate expose to once again make the case for reform of the one of the three branches of government that can least afford to be tarnished by allegations of influence-buying.

You cannot take the money out of elective politics for the executive and legislative branches. But for the judicial branch, where those in robes frequently must rule on the actions of the other two, the process must be

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purified - or a reasonable facsimile thereof.

And such a method exists and has been pushed for years by myself and many others, especially judges, lawyers and politicians such as state Senate Majority Leader Bill Raggio. It is called the Missouri Plan, or some variant, whereby judges are appointed rather than elected.

This makes sense for so many reasons and would erase any pay-to-play arrangement that, so the Times alleges, exists now in the court system. By erecting a proper vetting mechanism, you could be better assured of getting qualified jurists with integrity on the bench as opposed to campaigns in which who has the biggest war chest and best-connected consultants often wins.

What's more, voters know little about judges unless they have appeared in his or her court, as opposed to what they might know of legislators or local elected officials who cast myriad votes that affect people's lives.

There are real pitfalls in enacting an appointive system. The most obvious is that you create a smaller universe of possible judges and perhaps create a greater of two evils - an even juicier system whereby those doing the appointing salivate over the chance to pay back their cronies and, alas, campaign contributors.

Others say that a Missouri Plan would reduce the ability of minorities and women to gain appointment because of the inevitable cronyism. But I see it differently: Those making the appointments would be ultra-sensitive to the less juiced because they do have to face voters.

The most salient problem in enacting a Missouri Plan or a modified alternative, though, is that critics have such a compelling, albeit political counter-argument: Don't let the powers that be take power away from the people.

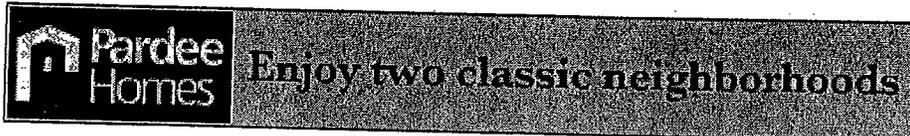
The late Mike O'Callaghan, the former governor and Sun executive editor, used to argue with me about my position, brandishing the voters-should-have-their-say club. His position was at least principled, as opposed to the state's most influential media outlet, the Las Vegas Review-Journal, which flip-flopped on a Missouri Plan ballot question almost 20 years ago and whose "paper of record" version of reporting on the legal system is to send out surveys to lawyers and ask them to be unbiased judges of judges - and anonymously to boot.

If the L.A. Times series can reawaken the debate over taking judges off the ballot, maybe it can, ironically, be a catalyst for evolution from small-town backwater to big city.

*Jon Ralston hosts the news discussion program "Face to Face With Jon Ralston" on Las Vegas ONE and also publishes the daily e-mail newsletter "RalstonFlash.com." His column for the Las Vegas Sun appears Sunday, Wednesday and Friday. Ralston can be reached at 870-7997 or through e-mail at [ralston@vegas.com](mailto:ralston@vegas.com).*

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March 20, 2007

### Taking cash power out of the judiciary

## Court reformers want judges to be appointed, at least in the beginning

By **Sam Skolnik**

Las Vegas Sun

Nevada court reform advocates concerned by the growing influence of money in state judicial elections have always banked on proposals such as the so-called "Missouri Plan" and "Nevada Plan" to try to fix the problem.

Those efforts hit brick walls in the form of voters reluctant to give up their Nevada constitutional right to choose their own District Court judges and Supreme Court justices.

But now, a wide and bipartisan array of would-be reformers - from judges and lawyers' groups to academics and veteran legislators - is excitedly touting Senate Joint Resolution 2, their newest, and they say most inclusive effort to change the system.

### Meet the Raggio Plan.

The measure, sponsored by Senate Majority Leader Bill Raggio, R-Reno, and currently before the Senate Judiciary Committee, is similar in several ways to the Missouri Plan.

### CURRENT PLAN

Nevada District Court judges and Supreme Court justices are elected every six years in nonpartisan, open elections. A bill recently proposed by Sen. Bill Raggio, R-Reno, would dramatically change the way District Court judges and Supreme Court justices are selected. The bill, currently before the Senate Judiciary Committee, has garnered strong bipartisan support. Following are the differences between the current law, two other plans for change that have been floated in the past and Raggio's proposal:

### MISSOURI PLAN

The state's Judicial Selection Commission would select three candidates for open seats, and the governor would



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The bill would mandate that the state's Judicial Selection Commission choose the names of three candidates for vacant District and Supreme Court seats, and then pass those names on to the governor, who would make the appointment.

After an initial term of one to two years, the judge would run in a "retention election," in which the only choice would be whether to keep or dump the judge. If retained, the judge would serve a six-year term.

Raggio's bill differs from the Missouri Plan in that the candidate would need 60 percent of the vote to be retained. Perhaps more importantly, his bill also would create the Judicial Performance Commission, which would review the judge's record and issue a public report before the election that would include a recommendation on whether the judge should be retained.

The Raggio Plan would differ greatly from the current system of nonpartisan, contested elections.

Change is necessary, proponents say, because judicial races too often have become "embroiled by politics," as Raggio said at a March 8 hearing on the topic, and have been tainted by an increasing reliance on fundraising.

"I've always thought the Founding Fathers showed wisdom by having federal judges appointed, and keeping politics out of the system," said Sen. Warren Hardy, R-Las Vegas, one of the bill's co-sponsors. "We need to find a way to get our judges out of politics and just have them concentrating on the law."

The issue of independence among Nevada's judiciary was put in stark relief when the Los Angeles Times last year published a series of articles about conflicts of interest involving several Las Vegas-based judges.

The series called Las Vegas a "juice town" in which attorneys and businesspeople give contributions to curry favor with judges, and it detailed repeated examples of apparent conflicts of interest that

make the appointment. Thereafter, judges would run in uncontested "retention" elections, in which voters could vote only either to keep or dump the judge.

**NEVADA PLAN**

A compromise plan proposed in recent years in which a candidate would be appointed by the same process as the Missouri Plan, but then two years later would run in an open, contested race. Then, if elected, the judge would run in retention elections every six years thereafter. This plan, thought to be more palatable to Nevada voters, never gained political traction.

**RAGGIO PLAN**

Somewhat similar to the Missouri Plan. For vacant District Court and Supreme Court seats, the governor would appoint one of the three names given to him by the Judicial Selection Commission. The judge's initial term would last from one to two years. Then, if the judge wants to stay in office, he would run in a retention election, needing to gain 60 percent of the vote to serve another six-year term. The Raggio Plan also would amend the Nevada Constitution to require each judge or justice to undergo a performance review by the newly created Judicial Performance Commission. This commission, after reviewing the judge's record and interviewing him, would then publicly release a report before the election, including a recommendation on whether the judge should be retained.

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occurred when campaign contributors appeared before the recipients in court.

Changing the system would require amending the Nevada Constitution, a lengthy and arduous task. First, the Legislature would need to pass the same bill in two successive sessions. Then, voters would need to approve the change in a referendum. That means that even if passed by this Legislature, the soonest the bill could take effect would be Jan. 1, 2011.

Attempts to change the process by adopting versions of the Missouri Plan have failed twice in Nevada. Voters rejected the changes in 1972 and 1988.

Yet supporters believe momentum has shifted. Just a handful of conservative citizen-activists showed up in opposition to Raggio's bill at the recent hearing. Several prominent reform proponents testified, including Reno District Judge Bridget Robb Peck and UNLV Boyd School of Law Dean Richard Morgan.

"Given the expose of the L.A. Times articles, and given some of the distasteful judicial campaigns of recent years, and because of the increasing amount of money it takes to get elected judge in Nevada, if it's going to happen, it's going to happen now," said Las Vegas lawyer Vince Consul, past president of the State Bar of Nevada.

The current president, Rew Goodenow, wrote in a position paper supporting Raggio's bill that the measure would reduce the number of negative judicial campaigns, reduce the costs to candidates and allow judges more time to do things like "resolving disputes and deciding cases."

Goodenow also noted that Nevada is the only state that allows its elected judges to directly solicit campaign contributions - a more dangerous practice than ever given a 2002 U.S. Supreme Court ruling that allows judicial candidates to state how they would decide individual cases the very same moment they are accepting contributions.

"The issue of independence in the judiciary is rock-bottom vital," said Craig Walton, president of the Nevada Center for Public Ethics and another reform advocate. "If you can't count on the courts to give you a fair shake, then all is lost."

Raggio noted in his testimony that 23 states and the District of Columbia have judges that are appointed to their initial terms. Fifteen of those states also then hold retention elections for successive terms.

His is not a perfect plan, Raggio conceded. Judges would likely still need to raise some money for retention elections, he said, "but they wouldn't have to raise the kind of money they would in a contested election."

Like the jury system, he said, "it may not be ideal, but it's the best system we can get."

Opponents of change say the gubernatorial appointments raise the specter of possible cronyism, and that, more simply, judges elected in open contests are typically responsive to the concerns of voters.

Despite these long-running concerns, change may finally be coming,

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<http://news.rgj.com/apps/pbcs.dll/article?AID=/20070418/OPED01/704180467/1098/OPED>

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# Start process that allows voters to decide on judges

April 18, 2007

This week's vote in the state Senate approving a modified form of the Missouri Plan is a good start toward revising the current -- unsatisfactory -- method of selecting the best and most qualified judges. The Assembly should follow the Senate's lead and begin the process to allow voters to decide whether to amend the Constitution.



Nevada Sen. Mark Amodei, R-Carson City, previously said that letting voters compare judicial candidates is best, but he voted against Senate Joint Resolution 2 in a 15-6 vote. Five Republicans and one Democrat rejected the proposal. (CATHLEEN ALLISON/NEVADA APPEAL)

This discussion has been going on since at least the mid-1980s. The current proposal seems to be the best solution we've had so far.

The measure, approved as Senate Joint Resolution 2, would amend the state Constitution. It aims to fix much of what is wrong with requiring judicial candidates to campaign for money, as they campaign for votes. The plan aims to dissolve possible political pitfalls for judges when running for office. (Most of their campaign funds come from lawyers and litigants, who appear before them, so the perception of conflict of interest is inevitable, even if it isn't actual.)

The Constitution already allows selection of candidates by a commission in the case of a vacancy. The current debate, then, rests on whether they should be elected or appointed -- beholden to the voters or to a governor who appoints them.

SJR2 possesses faithfulness to the voters' wishes and a certain symmetry that offers much of what anyone would wish in choosing powerful public officials. It provides for informed choice by a panel of experts, a trial period for the judges, but most of all, it allows voters to have the ultimate say about the judges they want to retain or to dismiss after a year of service.

Judges are engaged in a complex system whose inner workings typically confounds the average voter. People don't always go into the voting booth with a clear vision of the candidates' qualifications or of overall performance (even when they have a service record and stand for re-election to the bench). SJR2 could give voters some help but would not take away their choice.

D-6

Relieving judges from the indignity and distraction of having to beg for campaign funds would be a good result, but it is not the most important one. Most important is that voters want to have a say in who their top court officials will be and they deserve it. They deserve to have the choice and they deserve to decide whether they want to amend the Constitution to give them that choice.

D-7

**Selection through Nominating Commission  
for Supreme Court**

1. Alaska	Retention Election (10 years)
2. Arizona	Retention Election (6 years)
3. Colorado	Retention Election (10 years)
4. Connecticut	
5. Delaware	
6. District of Columbia	
7. Florida	Retention Election (6 years)
8. Hawaii	
9. Indiana	Retention Election (10 years)
10. Iowa	Retention Election (8 years)
11. Kansas	Retention Election (6 years)
12. Maryland	Retention Election (10 years)
13. Massachusetts	
14. Missouri	Retention Election (12 years)
15. Nebraska	Retention Election (6 years)
16. New Mexico	
17. New York	
18. Oklahoma	Retention Election (6 years)
19. Rhode Island	
20. South Dakota	Retention Election (8 years)
21. Tennessee	Retention Election (8 years)
22. Utah	Retention Election (10 years)
23. Vermont	
24. Wyoming	Retention Election (8 years)

**Subject: SJR2 Follow-On Comments****Date:** Sunday, May 20, 2007 5:29 PM**From:** alecia biddison <alecia.biddison@busickgroup.com>**To:** <fallen@asm.state.nv.us>, <banderson@asm.state.nv.us>, <jcarpenter@asm.state.nv.us>, <tcobb@asm.state.nv.us>, <mconklin@asm.state.nv.us>, <sgerhardt@asm.state.nv.us>, <egoedhart@asm.state.nv.us>, <whorne@asm.state.nv.us>, <gmabey@asm.state.nv.us>, <mmanendo@asm.state.nv.us>, <hmortenson@asm.state.nv.us>, <joceguera@asm.state.nv.us>, <johrenschall@asm.state.nv.us>, <tsegerblom@asm.state.nv.us>**Cc:** <bbuckley@asm.state.nv.us>, <wraggio@sen.state.nv.us>**Conversation:** SJR2 Follow-On Comments**Why a Modified Missouri Plan for Nevada.**

Some of the key benefits gained from enacting a Modified Missouri Plan for Nevada include:

- Insulates prospective and sitting judges from the burdens and pressures of costly and competitive open elections thereby changing the perception of the people;
- Emphasizes individual qualifications for selection instead of political power or influence;
- Provides a screening process whereby applicants apply for judicial seats and the best qualified candidates are recommended for the selection to the bench;
- Promotes judicial stability through a review process;
- Allows for accountability and democratic participation of the people by requiring judges stand for retention elections.

The assertion that Nevadan's lose power with a Modified Missouri Plan for Nevada is absolutely incorrect. Nevadan's will gain a greater opportunity to participate in the selection and retention of their judges. First they have the power to participate during the qualification process and voice their opinion; next, they have the power to petition the Governor when the names of the three candidates are published in the news media; and thirdly, they will have the opportunity to remove a poor performing judge with 40% of their "No" vote at the first general election, not exceeding two years on the bench. This is far more power than the people have today in an open general election. It is my opinion, the emails received in opposition to this bill are because they have not been educated on the process and the power they will gain.

Retention elections are intended to eliminate the elements that characterize contested elections. The judge runs only against himself and is evaluated by the voters based on his record instead of his party affiliation, popularity, or campaign promises. The absence of an opponent reduces the pressure of having to make political statements in order to raise large sums of money and directly reduces the perception issues associated with a costly campaign. We spend between \$150k - \$500k on our district seats. Equally disturbing is the source of most of that money. Nationwide

Assembly committee: Judiciary

Exhibit E P. \_\_\_ of \_\_\_ Date 5/23/07Submitted by: Alicia Biddison

Page 1 of 2

polls reveal the legal community (lawyers, legal political-action committees, and law firms) contributed more than 50% of the money raised in judicial campaigns.

Some may suggest that moving to a modified Missouri plan with a retention vote requiring judges to attain 60% of the "yes" vote's is too much. However, in Tennessee in 2006, all of the judges submitted for approval received an affirmative vote of at least 70 percent. 27 judges (three Supreme Court and 12 each on the Court of Appeals and Court of Criminal Appeals) Since the Plan was first implemented in the 1970's, only one judge (State Supreme Court Justice Penny White) has been removed under its provisions.

Others may claim that minorities and women will be adversely impacted by a retention vote. However, in 1993, an American Judicature Society study found that the largest proportion of African Americans (32%) and women (35%) attained judicial office through a merit plan.

Over the past several years, from one end of the state to the other, some of Nevada's judges have gained national notoriety. And while the media's attention on Nevada's judges may not reflect the many qualified, professional, and capable judges seated, it would appear the media and many Nevadans have lost faith in the judiciary. And whether this is simply a perception problem as many may suggest or a reality, change is needed and the time is right.

I believe a good beginning for reform can be achieved by changing how the people of Nevada qualify, seat, and retain their judges. I along with my company, The Busick Group, strongly support Senate Joint Resolution 2 and commit to forming a Political Action Committee to raise the necessary funds to educate Nevadans on the importance of changing the state constitution to support a modified Missouri plan for Nevada.

Respectfully Submitted,

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Alecia D. Biddison  
Managing Partner

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**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session  
May 24, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 9:37 a.m., on Thursday, May 24, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Assemblyman William Horne, Vice Chairman  
Assemblywoman Francis Allen  
Assemblyman John C. Carpenter  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Susan Gerhardt  
Assemblyman Ed Goedhart  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman Harry Mortenson  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**COMMITTEE MEMBERS ABSENT:**

Assemblyman John Ocegüera (Excused)

Minutes ID: 1337



**STAFF MEMBERS PRESENT:**

Jennifer M. Chisel, Committee Policy Analyst  
Risa Lang, Committee Counsel  
Kaci Kerfeld, Committee Secretary  
Matt Mowbray, Committee Assistant

**Chairman Anderson:**

[Meeting called to order and roll called.]

We began a work session yesterday relative to Senate Joint Resolution 2 and I asked Ms. Chisel to do some research on it (Exhibit C).

**Senate Joint Resolution 2: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)**

**Jennifer Chisel, Committee Policy Analyst:**

I looked at the election records for 2002, 2004, and 2006 to put this information together. Those are each reflected in the charts behind the memo page. At the top, in the green portion, you will see how many candidates there were total and how many of those were opposed or unopposed. For instance, in 2002, 3 out of the 13 candidates ran opposed, so most of them did not run with an opponent. Each race is pointed out. I have also provided information about the Supreme Court races. The information was taken from Secretary of State records and the contribution and expense reports that were on file. I included the Supreme Court and district court elections, since they are the only elections addressed in S.J.R. 2.

**Chairman Anderson:**

As you can see in this report, in 2002 only 3 of the 13 candidates who ran for district court judge were involved in the elections and the contributions that they were raising.

**Assemblyman Segerblom:**

This does not include the judge races that are the normal cycle, where most ran unopposed and still had to raise hundreds of thousands of dollars.

**Chairman Anderson:**

We did not ask for the listing of every single judicial race, only a sampling of one.

**Assemblyman Ohrenschall:**

Ms. Chisel, District 1 shows that Michael Griffin received 77 percent of the vote. What does the 23 percent of the vote that he did not receive represent?

**Jennifer Chisel:**

In the records I pulled up, it was unclear to me. The election summary for the Supreme Court races had the choice of the candidate and the choice "none of these candidates." That is reflected in the "none" category in the Supreme Court. When you get to the District Court, in 2006, the total is close to 100 percent. In 2002, they used the term "over-and-under votes." The term "over and under" is the remainder of the 100 percent. That 77 percent is what he received.

**Chairman Anderson:**

I would like to note that on the 2006 election district court page, that anomaly does not exist. That is a result of how the earlier cycles reported the actual number of people who participated in the election and who chose not to cast a ballot in that particular section of the election. The terminology changed because we view each election separately, but they are held on a common ballot. If you are looking for 100 percent, you will see that is true in the 2006 report, where it is not true in the earlier reports.

**Assemblywoman Allen:**

I have been rather outspoken about the 60 percent portion of S.J.R. 2. After considerable thought and discussion with members of the Committee, I would be willing to move the bill if the Committee agreed to a 55 percent ceiling.

**Assemblyman Horne:**

I would be amenable to that amendment.

**Chairman Anderson:**

A motion to reconsider has not been placed, but an Amend and Do Pass motion on S.J.R. 2 has. The amendment would change Section 22 to 55 percent instead of its current 60 percent.

**Assemblywoman Allen:**

We had discussion in Committee yesterday in regard to people who choose to skip that portion of the ballot. It might be worthy in this amendment to make it clear that it would be 55 percent of everyone who decided to vote in the election.

**Risa Lang, Committee Counsel:**

The current language says "if less than 60 percent of the votes cast on the question," so it is already specified.

**Assemblyman Conklin:**

I agree with Ms. Lang. It says, "are cast in that specific race," and that is the current number. I am unsure about the intended. If we put 55 percent of all of the ballots cast, then any ballot that is not cast automatically becomes a no. Is that correct?

**Chairman Anderson:**

In Assemblywoman Allen's proposed amendment, we are only changing the number from 60 percent to 55 percent. Ms. Lang indicated that because the continuation of the sentence says "on the question" we are talking about those in favor and those against being leveled against each other, rather than the aggregate total number of people who voted in the election. In skipping by the particular election, it is neither an affirmative or negative vote, but a neutral. Is that correct, Ms. Lang?

**Risa Lang:**

Yes, that is correct Chairman Anderson.

**Assemblyman Manendo:**

After the fact of judges running for retention, how is that going to be worded on the ballot? Will it have "retain candidate" or "not retain candidate"? I think that is relevant to placing this on the ballot.

**Chairman Anderson:**

Ms. Lang, do we need to be specific on the wording?

**Risa Lang:**

It would be worded so that you would be able to provide by statute for that if needed at a later time. This does not spell out the specifics of what would go on the ballot, and I am not sure if you would want to put that specifically in the constitution.

**Chairman Anderson:**

Assemblyman Manendo, this is a constitutional amendment so we may want to leave that particular practical application open so that in the future it may be changed.

**Assemblyman Manendo:**

My question leads to the percentage then. If you only put one name on the ballot, depending on how it is worded, it is easy to get a high percentage because they are unopposed.

**Assemblywoman Allen:**

In the research I did during the interim, I saw copies of ballots in other states where this takes place. It actually says the judges name and "to retain" with a "yes" or a "no." I do not think that there was confusion in this instance with voting.

**Chairman Anderson:**

Assemblyman Manendo would like to have a statement referring to the fact that the person must receive a percentage of votes, and the statement shall be a straight forward question with a yes or no answer to the question of retaining a certain judge.

**Assemblyman Manendo:**

The wording of the question is relevant to the percentage.

**Chairman Anderson:**

Ms. Chisel provides that on page 2, lines 11 through 13. It is a form provided by law which would indicate that if this were to become applicable that the form itself would be the proper discussion of the Elections and Procedures Committee. Assemblyman Manendo is concerned because he would like to see it become part of the constitution.

**Assemblyman Horne:**

The language for the ballot does not necessarily need to be in the constitution. The mandate from the constitution would be that the judge is to retain whatever percentage we come up with in a retention election. In order to be able to calculate that percentage, the voter needs a choice of yes or no. I cannot imagine putting the ballot forth with what was implied, which would be just the name of the judge by himself. That would be a 100 percent vote every time. There would not be a calculated vote over the entire sum of ballots cast over election. We are talking about the votes cast for that particular judge and the percentage they have to attain. That means that there has to be a "yes" or "no", or "retain" or "not retain" language.

**Chairman Anderson:**

Assemblyman Manendo, do you have a comfort level now?

**Assemblyman Manendo:**

I still feel that they might put the name on the ballot twice. It could say yes for this candidate or no for this candidate. I am concerned that it could be extremely easy to obtain 60 percent with one person's name on the ballot. I feel this is something we need to consider because this is a huge step.

**Assemblyman Carpenter:**

Are there going to be two commissions? Is there one Judicial Performance Commission and another one that would put forth the names to the governor?

**Risa Lang:**

There is the Commission on Judicial Performance and there would also be the Commission on Judicial Selection. They are different.

**Chairman Anderson:**

I remain concerned about the election question, wanting to make sure that there is an opportunity for public testimony at the election. There also needs to be an opportunity for the public to make comment on the potential candidates in front of the Selection Committee for Nomination.

**Assemblyman Carpenter:**

I have a concern about page 3. It says that "a vote of an individual member of a commission must not be disclosed to the public." If this is supposed to be some kind of an open process, the public should be involved.

**Chairman Anderson:**

The rules for the Commission on Judicial Selection are not outlined in the bill. We can see that time has been put into the Committee on Judicial Performance, but making sure that the public has input into the judicial selection part seems to be less open.

**Assemblyman Horne:**

Page 3 paragraph 4 appears to be talking about the Judicial Performance Commission. Who is on that Commission?

**Chairman Anderson:**

There are two members of the State Bar of Nevada, each justice of the Supreme Court, and judges of the Court of Appeals.

**Assemblyman Horne:**

The reason there is nondisclosure to the public may be to protect them from possible repercussions for unfavorable voting. For instance, if I am an attorney sitting on the Commission and I decide not to vote an affirmative for something

and it moves forward, then I would be known by a certain judge that I disapprove of them. If I am an attorney, I may have cases before this judge. There are members of the legal profession that are members of the Commission.

**Chairman Anderson:**

This bill also increases the members of the judicial selection from three to four. If we are concerned about making sure that public comment is taken, we can look at page 6, Section 20. That section talks about the Commission on Judicial Selection, and we could look at language for when a vacancy occurs, for any reason, in the Supreme Court or the courts of appeals or among the district judges. This does not apply to the justices of the peace; they are still going to be elected. While the Commission on Judicial Selection makes its own operating rules by regulation, if we were to put in here some restrictions about public testimony or an announcement so that we know that it has occurred, we would then at least give the public the opportunity to make comment. We could restrict the public comment on potential appointments and the hearings by the Commission on Judicial Selection. They shall select three nominees for the Commission and shall provide names of three nominees to the Governor and the public.

**Assemblywoman Allen:**

I like Assemblyman Carpenter's point in relation to the Judicial Selection Commission public disclosure of how they voted on each judge. I feel that is a reasonable request.

**Chairman Anderson:**

I am concerned about what Assemblyman Horne outlined concerning the fact that there will be two judges and potentially two attorneys who will appear in front of the appointed judges on a regular basis. When the attorneys meet to make their deliberation and make a selection, they should not have to worry if it is going to affect them in another part of their life. The only advantage of having judges who are appointed rather than elected, is that independence allows them to look at the weight of the case and not the popularity of the case.

**Assemblyman Ohrenschall:**

I have a hard time convincing myself that the citizens are not qualified to make these decisions. The influence of money in politics is a problem across the spectrum that should be addressed in another bill in terms of finance reform, maybe only allowing lawyers to make a symbolic contribution and not to heavily fund judges' campaigns. I have a problem with taking the voters out of the selection process. I know the selection panels and the performance panels

are supposed to be based purely on merit, but politics affects every committee. We are going to be taking political choices and making them more secretive.

**Chairman Anderson:**

The simple solution would be to see if the Amend and Do Pass motion without any other amendment moves.

ASSEMBLYWOMAN ALLEN MOVED TO AMEND AND DO PASS  
SENATE JOINT RESOLUTION 2 WITH THE AMENDMENTS  
CHANGING 60 PERCENT TO 55 PERCENT AT LINE 14 AND  
LINE 22.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN CARPENTER, MANENDO,  
OHRENSCHALL AND CHAIRMAN ANDERSON VOTED NO.  
ASSEMBLYMAN OCEGUERA WAS EXCUSED FOR THE VOTE.)

I will assign this bill to Assemblyman Conklin.

[Meeting adjourned at 10:53 a.m.]

RESPECTFULLY SUBMITTED:

\_\_\_\_\_  
Kaci Kerfeld  
Committee Secretary

APPROVED BY:

\_\_\_\_\_  
Assemblyman Bernie Anderson, Chair

DATE: \_\_\_\_\_

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**MEMORANDUM**

DATE: May 24, 2007  
TO: Assemblyman Bernie Anderson, Chairman  
Members of the Assembly Committee on Judiciary  
FROM: Jennifer M. Chisel, Senior Research Analyst  
Research Division *Jc*  
SUBJECT: **Judicial Elections**

This memorandum responds to questions by Committee members during the May 23, 2007, work session for Senate Joint Resolution No. 2. Attached are three charts that provide the raw data for Supreme Court and district court elections for 2002, 2004, and 2006. This data came from contribution and expense reports that candidates must file with the Secretary of State's Office or with the county where the election is held.

Assemblyman Manendo requested the average cost for a judicial election in the counties of Carson, Clark, Elko, Washoe, and another rural county. In order to provide the clearest information, the raw data is presented instead. In addition, court personnel indicated that many variables factor into the cost of an election; therefore, an average may be misleading.

The information presented does not include data for justice courts or municipal courts since S.J.R. 2 applies to elections for Supreme Court justices and district court judges.

JMC/rd:W77986  
Enc.

Assembly committee: Judiciary  
Exhibit 2 P.     of     Date 5/24/07  
Submitted by: Jennifer Chisel

2002 Supreme Court and District Court Races  
3 out of 13 candidates ran opposed

DISTRICT COURTS

Candidates	Percentage of Vote	Contributions Reported	Expenses Reported	County
District 1 Department 1				
Michael Griffin	77%	\$150	\$150	Storey
District 1 Department 2				
William Maddox	70%	\$9,200	\$9,300	Storey
District 3 Department 1				
David Huff	92%	\$0	\$150	Churchill/Lyon
District 3 Department 2				
Archie Blake	91%	\$0	\$150	Churchill/Lyon
District 3 Department 3				
Robert Estes	91%	\$0	\$150	Churchill/Lyon
District 5 Department 1				
John Davis	77%	\$0	\$650	Esmeralda/Mineral/ Nye
District 5 Department 2				
Laurel Duffy	28%	\$6,000	\$26,000	Esmeralda/Mineral/ Nye
Robert Lane	65%	\$41,000	\$38,000	Esmeralda/Mineral/ Nye
District 6 Department 1				
Richard Wagner	80%	\$0	\$450	Humboldt/Lander/ Pershing
District 6 Department 2				
John Iroz	53%	\$13,000	\$12,000	Humboldt/Lander/ Pershing
Jerry Sullivan	44%	\$4,000	\$20,000	Humboldt/Lander/ Pershing
District 7 Department 1				
Steve Dobrescu	90%	\$0	\$300	Eureka/Lincoln/ White Pine
District 7 Department 2				
Dan Papez	91%	\$0	\$450	Eureka/Lincoln/ White Pine

SUPREME COURT

Candidates	Percentage of vote	Contributions reported	Expenses reported	
Supreme Court Seat B				
Don Chairez	29%	\$133,000	\$186,000	
Bill Maupin	53%	\$317,000	\$325,000	
None	16%			
Supreme Court Seat D				
Mark Gibbons	80%	\$272,000	\$286,000	
None	18%			

2004 Supreme Court and District Court Races  
9 out of 9 candidates ran opposed

**DISTRICT COURTS**

Candidates	Percentage of Vote	Contributions Reported	Expenses Reported	County
<b>District 2 Family Division Department 11</b>				
Pete Sferrazza	46%	\$176,000	\$168,000	Washoe
Chuck Weller	54%	\$194,000	\$187,000	Washoe
<b>District 8 Department 1</b>				
Ken Cory	51%	\$175,000	\$156,000	Clark
Bill Henderson	49%	\$6,000	\$43,000	Clark
<b>District 8 Department 11</b>				
Mike Davidson	46%	\$75,000	\$66,000	Clark
Betsy Gonzalez	54%	\$170,000	\$161,000	Clark
<b>District 8 Family Division Department D</b>				
Elizabeth Halverson	49%	\$30,000	\$31,000	Clark
Gerald Hardcastle	51%	\$34,000	\$36,000	Clark
<b>District 8 Family Division Department E</b>				
Robert Lueck	45%	\$94,000	\$92,000	Clark
Sandra Pomrenze	55%	\$29,000	\$25,000	Clark
<b>District 8 Family Division Department F</b>				
Bob Gaston	45%	\$81,000	\$88,000	Clark
Stefany Miley	55%	\$97,000	\$95,000	Clark

**SUPREME COURT**

Candidates	Percentage of Vote	Contributions Reported	Expenses Reported	
<b>Supreme Court Seat A</b>				
Jim Hardesty	48%	\$644,000	\$595,000	
Cynthia Steel	35%	\$95,000	\$95,000	
None	17%			
<b>Supreme Court Seat E</b>				
John Mason	29%	\$862,500	\$862,100	
Ron Parraguirre	53%	\$620,000	\$615,000	
None	18%			
<b>Supreme Court Seat F</b>				
Michael Douglas	50%	\$215,000	\$194,000	
Joel Hansen	27%	\$48,000	\$48,000	
None	23%			

W77986-2

2006 Supreme Court and District Court Races  
8 out of 9 candidates ran opposed

**DISTRICT COURTS**

Candidates	Percentage of Vote	Contributions Reported	Expenses Reported	County
<b>District 2 Department 7</b>				
Patrick Flanagan	59%	\$74,000	\$47,000	Washoe
Bridget Peck	41%	\$110,000	\$98,000	Washoe
<b>District 3 Department 2</b>				
Leon Aberasturi	55%	\$74,000	\$79,000	Churchill/Lyon
Wayne Pederson	45%	\$56,000	\$56,000	Churchill/Lyon
<b>District 8 Department 16</b>				
Conrad Hafen	41%	\$6,300	\$6,200	Clark
Tim Williams	59%	\$285,000	\$284,000	Clark
<b>District 8 Department 22</b>				
Ron Isreal	45%	\$51,000	\$48,000	Clark
Susan Johnson	55%	\$274,000	\$267,000	Clark
<b>District 8 Department 23</b>				
Elizabeth Halverson	50.3%	\$79,000	\$76,000	Clark
Bill Henderson	49.7%	\$75,000	\$74,000	Clark
<b>District 8 Family Division Department M</b>				
Robert Lueck	45%	\$96,000	\$146,000	Clark
William Potter	55%	\$40,000	\$48,000	Clark

**SUPREME COURT**

Candidates	Percentage of Vote	Contributions Reported	Expenses Reported	
<b>Supreme Court Seat C</b>				
Michael Cherry	75%	\$501,000	\$131,000	
None	25%			
<b>Supreme Court Seat F</b>				
Michael Douglas	48%	\$403,000	\$425,000	
Cynthia Steel	36%	\$82,000	\$74,000	
None	15%			
<b>Supreme Court Seat G</b>				
Nancy Becker	38%	\$532,000	\$534,000	
Nancy Saitta	47%	\$647,000	\$576,000	
None	15%			

W77986-3

# FLOOR ACTIONS

## AMENDMENTS ON SECOND READING FLOOR VOTES AND STATEMENTS OTHER ACTIONS

**NOTE:** THESE FLOOR ACTIONS ARE TAKEN FROM THE *DAILY JOURNALS* ([HTTP://WWW.LEG.STATE.NV.US/SESSION/74TH2007/JOURNAL/](http://www.leg.state.nv.us/session/74th2007/journal/)), WHICH ARE NOT THE OFFICIAL FINALIZED VERSIONS OF THE *JOURNALS*. CONSULT THE PRINT VERSION FOR THE OFFICIAL RECORD.

**THE SEVENTY-FIRST DAY**


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CARSON CITY (Monday), April 16, 2007

Senate called to order at 11:28 a.m.

President pro Tempore Amodei presiding.

Roll called.

All present.

Prayer by the Chaplain, Reverend Bruce Henderson.

They tell us that our time here is halfway over. President Woodrow Wilson once said that he felt like "the man who is lodging happily in the inn which lies halfway along the journey, and that in time, with a fresh impulse, we shall go the rest of the journey and sleep at the journey's end like men with a quiet conscience."

Lord, we ask for such a fresh impulse and a quiet conscience for the rest of our journey here. I pray in the Name of the One Who always wants to travel with us.

AMEN.

Pledge of Allegiance to the Flag.

Senator Raggio moved that further reading of the Journal be dispensed with, and the President pro Tempore and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

#### REPORTS OF COMMITTEES

*Mr. President pro Tempore:*

Your Committee on Commerce and Labor, to which was referred Senate Bill No. 361, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

RANDOLPH J. TOWNSEND, *Chair*

*Mr. President pro Tempore:*

Your Committee on Finance, to which was referred Senate Bill No. 316, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Finance, to which was rereferred Senate Bill No. 32, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass as amended.

WILLIAM J. RAGGIO, *Chair*

*Mr. President pro Tempore:*

Your Committee on Government Affairs, to which was referred Senate Bill No. 500, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

WARREN B. HARDY II, *Chair*

*Mr. President pro Tempore:*

Your Committee on Judiciary, to which were referred Senate Bills Nos. 85, 148, 195, 217, 420, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARK E. AMODEI, *Chair*

*Mr. President pro Tempore:*

Your Committee on Legislative Operations and Elections, to which were referred Senate Bills Nos. 149, 389; Senate Joint Resolutions Nos. 15, 16, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Senate Bill No. 508 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 541.

Bill read third time.

Roll call on Senate Bill No. 541:

YEAS—21.

NAYS—None.

Senate Bill No. 541 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Bill ordered transmitted to the Assembly.

Senate Joint Resolution No. 2.

Resolution read third time.

Remarks by Senators Care, Lee, Raggio and Coffin.

Senator Raggio requested that the following remarks be entered in the Journal.

SENATOR CARE:

Thank you, Mr. President Pro Tempore. There is a floor statement on each desk. We do not have a Judiciary in this Country unless we have an independent Judiciary. The intent of this resolution, something the voters would have to approve if it passes twice in the Legislature, is to take steps to ensure that we have a Judiciary that can operate by deliberating on the facts, the law and nothing else. Judges should not have to worry about campaigns and raising money. The other side of this is that you would not have parties and lawyers who must ponder whether the judge somehow has considered who has been helpful in a campaign.

I know there have been public allegations of that in an exposé in the Los Angeles Times. This is not a new idea. Twenty-three states and the District of Columbia already have a plan like this. For those who are concerned that the voters do not have a say in this, that is not true. This law would take effect after December 31, 2011. The Judicial Selection Commission would issue a public report offering an opinion as to whether the judicial candidate or a judge seeking another term on the bench has met the qualifications or the standards of the Judicial Selection Commission. The Judicial Selection Commission would include nonlawyers. I would urge the Senate to support this measure known as the Missouri Plan. It is a step in the right direction.

SENATOR LEE:

Thank you, Mr. President Pro Tempore. Two sessions ago, we had a bill that said to be a District Court Judge a person had to have ten years of experience. To be a Supreme Court Justice a person had to have 15 years of experience. By changing this, does it change that caveat?

SENATOR CARE:

It does not. This resolution would apply only to the Supreme Court Justices and District Court Judges, not the Justice of the Peace or Justice Court Judges.

SENATOR RAGGIO:

Thank you, Mr. President Pro Tempore. I support this resolution that would amend the Constitution because too often judicial elections become embroiled in politics. As an attorney who has practiced in excess of 50 years in this State, I have seen too many examples of that. This appointment system would be provided under a constitutional amendment with retention elections. I emphasize this because some people think this takes away the right of the public to vote. It does not. It provides for elections by the people. A judge will run on his or her record, and it will be a question as to whether that judge should be retained. This would remove judges

from the elements of partisan politics and would free judges in large measure from the necessity of soliciting political contributions.

Where do judges go for political contributions? As a practical matter, they go to law firms, litigants and potential litigants. These people are the usual source of financial contributions in judicial elections. As my colleague indicated, the District of Columbia and 23 other states, states that are among the most progressive in this effort for judicial reform, have adopted nominating-commission plans for appointing judges to an initial term on the bench. Fifteen of these states hold retention elections at the expiration of the judges' terms. These are not, like the federal system, a lifetime appointment. They still serve terms. The people of Nevada have already approved an amendment to our Constitution that provides for a Judicial Selection Commission to make recommendations for filling vacancies at the Supreme Court and District Court level. It is this Commission that makes nominations for the initial appointments by the Governor from the names submitted by the Commission. This has worked exceedingly well in filling vacancies.

Senate Joint Resolution No. 2 contains the best features of all of the merit selection plans that have been adopted. Similar proposals have been before this body and the electorate in past years. This is an improved version and is one that merits our support. As the Senator from Clark No. 7 indicated, there have been events since these measures were last considered by this legislative body and by the electorate that fully justify that we, again, pass this through two sessions, submit it to the voters and let them decide whether or not there is a better way to select our higher court judges.

Senate Joint Resolution No. 2 is intended to ensure, insofar as possible, an independent Judiciary. It is not a perfect system, but it is a vast improvement. The jury system is not perfect, but it is certainly the best we can devise at this time for the administration of justice. This plan will enable a judge to devote his or her entire time to the business of the court since the judge will not take part in the usual political campaigns. The plan ensures that full consideration will be given to the ability, character and qualifications of a judicial candidate before that person's name is permitted to go on the ballot and will cause the attention of the voters to be focused on a judge's record making it easier to remove incompetent judges from office and to retain judges whose records were meritorious.

That has been the experience in other jurisdictions that have adopted such a plan. In my experience, over all, I am convinced that the appointment of judges often brings a better quality individual to this position of a higher court judge.

Senate Joint Resolution No. 2 will encourage well qualified people to serve on the bench who would not otherwise submit themselves to the ordeal of campaigning for office under the present political system or who lack the means of financing such a campaign or who are reluctant in their profession to seek these kinds of campaign contributions from law firms, litigants and potential litigants. There is a vast distinction between those who are willing to serve or to seek the office of a Supreme Court Justice or a District Court Judge. I believe it is time to give the people of this State an opportunity to express themselves on this and to indicate whether or not this might ensure, in some measure, a more independent Judiciary in this State.

SENATOR COFFIN:

Thank you, Mr. President Pro Tempore. I also endorse this resolution. I voiced my favor of this measure in 1987, though I do not want to repeat the same speech I gave then. I can say that nothing has happened in 20 years to change my mind. In fact, I think I have grown more experienced and more aware of the problems caused by the election of judges.

From 1972-1982, I served as a paid political consultant to campaigns. I managed some; I advised others, and during that time, there were four judicial campaigns. They were for the Supreme Court, District Courts and for a Justice of the Peace position. In all of those cases, I went with my candidates who were sitting judges at that time and I watched how they had to raise money and how they had to go hat-in-hand to the most logical contributors. The Majority Leader has already named them. They are litigants, lawyers and those who will probably be litigants. It is amazing how demanding people can be and how aware they are that they are trying to influence a decision. They will continually ask the questions: How do you feel about this?

How do you feel about that? I would have to interrupt them and say, "The judge cannot comment on that."

The odd thing is that the person who is not a judge is doing just that and saying so, sometimes with a wink-and-a-nod and sometimes verbally. The judge who is trying to do his or her best job is in a vise.

This resolution is a way to try to bring them out of that situation. Nothing has changed. Actually, things have gotten worse in Nevada in the past 20 years. Everyone has an issue before a court, even those who hold themselves up to be guardians of the people. They are those who tell the public how to vote. Newspapers are a good example. Newspaper chains have cases in front of the courts all of the time. They love to make certain the judges are elected so that they can help influence the outcome of these cases. Let us be honest about it. No one is pure in the present system.

I feel that after my experience of watching these ladies and gentlemen try to seek support as they go hat-in-hand soliciting contributions is disgusting, disgraceful and continues the great old name Gilman Ostrander once put on the State of Nevada, 50 years ago, in his classic book, "*Nevada the Great Rotten Borough*."

Roll call on Senate Joint Resolution No. 2:

YEAS—15.

NAYS—Amodei, Beers, Cegavske, Heck, McGinness, Schneider—6.

Senate Joint Resolution No. 2 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Resolution ordered transmitted to the Assembly.

Senate Joint Resolution No. 11.

Resolution read third time.

Roll call on Senate Joint Resolution No. 11:

YEAS—21.

NAYS—None.

Senate Joint Resolution No. 11 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Resolution ordered transmitted to the Assembly.

Senate Joint Resolution No. 12.

Resolution read third time.

Roll call on Senate Joint Resolution No. 12:

YEAS—19.

NAYS—Carlton, Titus—2.

Senate Joint Resolution No. 12 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Resolution ordered transmitted to the Assembly.

Senate Joint Resolution No. 13.

Resolution read third time.

Roll call on Senate Joint Resolution No. 13:

YEAS—21.

NAYS—None.

Senate Joint Resolution No. 13 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Resolution ordered transmitted to the Assembly.

Senate Joint Resolution No. 14.

Resolution read third time.

Roll call on Senate Joint Resolution No. 14:

YEAS—17.

NAYS—Beers, Cegavske, Hardy, McGinness—4.

Senate Joint Resolution No. 14 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Resolution ordered transmitted to the Assembly.

Senate Joint Resolution No. 17.

Resolution read third time.

Roll call on Senate Joint Resolution No. 17:

YEAS—21.

NAYS—None.

Senate Joint Resolution No. 17 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Resolution ordered transmitted to the Assembly.

Senate Joint Resolution No. 18.

Resolution read third time.

Roll call on Senate Joint Resolution No. 18:

YEAS—20.

NAYS—Carlton.

Senate Joint Resolution No. 18 having received a constitutional majority, Mr. President pro Tempore declared it passed.

Resolution ordered transmitted to the Assembly.

#### MOTIONS, RESOLUTIONS AND NOTICES

In compliance with a notice given on the previous day, Senator Townsend moved that the vote whereby Senate Bill No. 409 was passed be reconsidered.

Remarks by Senator Townsend.

Motion carried by a division of the house.

Bill ordered to the bottom of General File.

Senator Townsend moved that Senate Bill No. 409 be taken from the General File and placed on the Secretary's desk.

Remarks by Senators Townsend and Titus.

Motion carried by a division of the house.

Senator Titus gave notice that on the next legislative day she would move to reconsider the vote whereby Senate Joint Resolution No. 2 was this day passed.

**THE SEVENTY-SECOND DAY**


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CARSON CITY (Tuesday), April 17, 2007

Senate called to order at 11:27 a.m.

President pro Tempore Amodei presiding.

Roll called.

All present.

Prayer by the Chaplain, Reverend Bruce Henderson.

Lord, we grieve today over the tragic loss in Virginia. Please be with all of those families.

Father in heaven, the dictionary defines "senate" as an assembly or council of citizens having the highest deliberative functions in a government. "Highest deliberative functions"—Whew! That is quite a responsibility. Please bless this body. I pray in the Name of the one who is over all functions.

AMEN.

Pledge of Allegiance to the Flag.

Senator Raggio moved that further reading of the Journal be dispensed with, and the President pro Tempore and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

#### REPORTS OF COMMITTEES

*Mr. President pro Tempore:*

Your Committee on Commerce and Labor, to which were referred Senate Bills Nos. 159, 279, 410, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

RANDOLPH J. TOWNSEND, *Chair*

*Mr. President pro Tempore:*

Your Committee on Finance, to which was referred Senate Bill No. 457, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

WILLIAM J. RAGGIO, *Chair*

*Mr. President pro Tempore:*

Your Committee on Government Affairs, to which were referred Senate Bills Nos. 84, 137, 145, 200, 369, 447, 497, 517, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

WARREN B. HARDY II, *Chair*

*Mr. President pro Tempore:*

Your Committee on Judiciary, to which were referred Assembly Bills Nos. 153, 192, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MARK E. AMODEI, *Chair*

*Mr. President pro Tempore:*

Your Committee on Natural Resources, to which were referred Senate Bills Nos. 272, 274, 306, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

DEAN A. RHOADS, *Chair*

In compliance with a notice given on the previous day, Senator Titus moved that the vote whereby Senate Joint Resolution No. 2 was passed be reconsidered.

Remarks by Senators Titus and Raggio.

Motion failed.

Senate Joint Resolution No. 2 ordered transmitted to the Assembly.

UNFINISHED BUSINESS  
SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President pro Tempore and Secretary signed Assembly Bill No. 555.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Beers, the privilege of the floor of the Senate Chamber for this day was extended to Diane Fruth and Bob Anderson.

On request of Senator Care, the privilege of the floor of the Senate Chamber for this day was extended to Trey Vergiels and Zachary Vergiels.

On request of Senator Carlton, the privilege of the floor of the Senate Chamber for this day was extended to former Assemblyman Jim Spinello and Bonnie Schuff.

On request of Senator Cegavske, the privilege of the floor of the Senate Chamber for this day was extended to Ryan McHugh and Jack McHugh.

On request of Senator Coffin, the privilege of the floor of the Senate Chamber for this day was extended to Robert Vergiels and Salan Vergiels.

On request of Senator Horsford, the privilege of the floor of the Senate Chamber for this day was extended to Kelly Arndt, Jim Marchesi and Joan Wilhelm.

On request of Senator Lee, the privilege of the floor of the Senate Chamber for this day was extended to Roger Trounday, Gail Trounday, Giles Altenburg and Nancy Piedmonte.

On request of Senator Mathews, the privilege of the floor of the Senate Chamber for this day was extended to the following students, chaperones and teachers from the Robert Mitchell Elementary School: Monica Baldwin, Joey Castillo-Meza, Elba Centeno, Celeste Cortes, John'ne Craig, Joseph Dominguez, Antonio Garcia, Rachel Goodwin, Thomas Guerrero-Bonilla, Ruben Pacheco, Edgar Parra Sambrano, Parsh Patel, Michelle Quintero, Phoenix Robinson, Dillon Cattnach, Tony Martinez-Vincent, Cameron Stewart, Jareth Trottot, Ericka Thrasher, Daniel Sandoval, Beatriz Adame, Rafael Cerrillo, Sandy Espino, Devon Fox Rhyner, Gregorio Garcia Luna, Danny Gomez, Ashley Goodale, Adilene Hernandez Reyes, Dalisha Kindle, Chase Kynast, J'quan Lee, Dustin Lemons, Edgar Leon, Vanessa Orellana, Dayanna Parra Sambrano, Eddy Pichardo, Armando Reyes, Jasmine Scott,

# NEVADA LEGISLATURE

Seventy-Fourth Session, 2007

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## ASSEMBLY DAILY JOURNAL

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### THE ONE HUNDRED AND SEVENTH DAY

CARSON CITY (Tuesday), May 22, 2007

Assembly called to order at 11:02 a.m.

Madam Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Albert Tilstra.

Our Father, I pray for the members of this body today. May they see the larger picture of the work that they have to accomplish in the next two weeks. Help them to understand that it is better to fail in a cause that will ultimately succeed than to succeed in a cause that will ultimately fail. Guide them in their work and then teach them to listen.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Ocegüera moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

#### REPORTS OF COMMITTEES

*Madam Speaker:*

Your Committee on Commerce and Labor, to which were referred Assembly Bill No. 619; Senate Bills Nos. 3, 53, 111, 279, 310, 432 has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

JOHN OCEGUERA, *Chair*

*Madam Speaker:*

Your Committee on Elections, Procedures, Ethics, and Constitutional Amendments, to which was referred Senate Joint Resolution No. 4, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

HARRY MORTENSON, *Chair*

*Madam Speaker:*

Your Committee on Health and Human Services, to which were referred Senate Bills Nos. 5, 314, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

SHEILA LESLIE, *Chair*

*Madam Speaker:*

Your Committee on Judiciary, to which were referred Senate Bills Nos. 103, 157, 237, 242, 542, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BERNIE ANDERSON, *Chair*

*Madam Speaker:*

Your Committee on Ways and Means, to which were rereferred Assembly Bills Nos. 291, 586, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MORSE ARBERRY JR., *Chair*

## MOTIONS, RESOLUTIONS AND NOTICES

### NOTICE OF WAIVER

A Waiver requested by: Legislative Counsel

For: A New BDR No. 24-1515: Makes various changes regarding precinct meetings of major political parties.

To Waive:

Subsections 1 and 2 of Joint Standing Rule No. 14 and Joint Standing Rule Nos. 14.2 and 14.3.

Has been granted effective: May 18, 2007.

WILLIAM J. RAGGIO  
*Senate Majority Leader*

BARBARA BUCKLEY  
*Speaker of the Assembly*

A Waiver requested by: William J. Raggio

For: Senate Joint Resolution No. 2.

To Waive:

Subsection 3 of Joint Standing Rule No. 14.3 (out of final committee of 2nd house by 103rd day).

Has been granted effective: Monday, May 21, 2007.

WILLIAM J. RAGGIO  
*Senate Majority Leader*

BARBARA BUCKLEY  
*Speaker of the Assembly*

Assemblyman Oceguera moved that AHORA NEWSPAPER: Mario Delarosa, be accepted as accredited press representatives, that they be assigned space at the press table in the Assembly Chamber and that they be allowed use of appropriate broadcasting facilities.

Motion carried.

## SECOND READING AND AMENDMENT

Assembly Bill No. 586.

Bill read second time.

# NEVADA LEGISLATURE

Seventy-Fourth Session, 2007

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## ASSEMBLY DAILY JOURNAL

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### THE ONE HUNDRED AND TENTH DAY

CARSON CITY (Friday), May 25, 2007

Assembly called to order at 10:32 a.m.

Madam Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Pastor Albert Tilstra.

Lord, give us the faith to believe that the words now spoken and the yearnings of the hearts now open before You are heard and understood in Your presence. Hold us steady lest we lose our poise. Blunt out speech lest by cutting words and careless deeds we hurt our colleagues and the cause for which we speak. Where we differ in approaches to a problem, may we ever be open to consider another and a better way, guided not by whether it be popular, or expedient, or practical, but always whether it be right. Where we are wrong, make us willing to change and where we are right make us easy to live with. Hear our prayer, O Lord.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Ocegüera moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

#### REPORTS OF COMMITTEES

*Madam Speaker:*

Your Committee on Judiciary, to which was referred Senate Joint Resolution No. 2, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

BERNIE ANDERSON, *Chair*

*Madam Speaker:*

Your Committee on Transportation, to which were referred Assembly Bill No. 624; Senate Bill No. 161, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

KELVIN ATKINSON, *Chair*

MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Ocegüera moved that all rules be suspended, reading so far considered second reading, rules further suspended, Senate Bill No. 477 declared an emergency measure under the Constitution and placed on third reading and final passage.

Motion carried.

Assemblyman Ocegüera moved that for the balance of the session, that all rules be suspended, reading so far had considered second reading, rules further suspended, all bills and joint resolutions reported out of committee declared an emergency measure under the Constitution and placed at the top of third reading and final passage.

Motion carried.

Assemblyman Ocegüera moved that upon return from the printer all bills and resolutions be placed on the General File for this legislative day.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 624.

Bill read third time.

Remarks by Assemblyman Goicoechea.

Roll call on Assembly Bill No. 624:

YEAS—41.

NAYS—None.

EXCUSED—Settemeyer.

Assembly Bill No. 624 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Bill No. 161.

Bill read third time.

Remarks by Assemblyman Atkinson.

Potential conflict of interest declared by Assemblyman Hardy.

Roll call on Senate Bill No. 161:

YEAS—41.

NAYS—None.

EXCUSED—Settemeyer.

Senate Bill No. 161 having received a constitutional majority, Madam Speaker declared it passed.

Bill ordered transmitted to the Senate.

Senate Joint Resolution No. 2.

Resolution read third time.

The following amendment was proposed by the Committee on Judiciary:  
Amendment No. 984.

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to provide for the initial appointment by the Governor of justices and judges and any subsequent retention of those justices and judges by election.

Legislative Counsel’s Digest:

This resolution amends the Nevada Constitution, which currently provides for the popular election of justices of the Supreme Court and judges of the district court, to provide for: (1) the initial appointment by the Governor of justices and judges, from candidates recommended by the Commission on Judicial Selection; and (2) any subsequent retention of those justices and judges by approval of a ballot question concerning their retention. (Nev. Const. Art. 6, §§ 3, 5) Under this resolution, if a vacancy occurs in the Supreme Court or a district court for any reason, the Governor appoints a justice or judge from candidates selected by the Commission on Judicial Selection, and the initial term of that justice or judge expires on the first Monday of January following the general election occurring at least 12 months after the justice or judge is appointed. Thereafter, if the justice or judge wishes to serve another term, he must declare his candidacy for a retention election. If ~~60~~ 55 percent or more of the votes cast are in favor of the retention of the justice or judge, he will then serve a 6-year term and must run in a retention election if he wishes to serve another 6-year term. If the justice or judge does not declare his candidacy for the retention election or if less than ~~60~~ 55 percent of the votes cast are in favor of his retention, a vacancy is created at the end of his term which must be filled by appointment.

In addition, this resolution amends the Nevada Constitution to require each justice or judge who has declared his candidacy for a retention election to undergo a review of his performance as a justice or judge. This resolution creates the Commission on Judicial Performance and requires the Commission to perform these reviews. The review of each justice or judge must consist of a review of the record of the justice or judge and at least one interview of the justice or judge. At the conclusion of this review, the Commission must prepare and release to the public a report containing information about the review and a recommendation on the question of whether the justice or judge should be retained.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 22, be added to Article 6 of the Nevada Constitution to read as follows:

*Sec. 22. 1. Commencing with a term of office that expires on or after December 31, 2011, each justice of the Supreme Court, judge of the court of*

*appeals, if established by the Legislature, or judge of the district court who desires to succeed himself must, on or before July 1 next preceding the expiration of his term of office, declare his candidacy in the manner provided by law. With respect to each justice or judge who so declares, the question must be presented at the next general election, in a form provided by law, whether that justice or judge shall succeed himself.*

*2. If ~~60~~ 55 percent or more of the votes cast on the question are cast in favor of the justice or judge succeeding himself, the justice or judge shall succeed himself. The term of office of each justice or judge who succeeds himself is 6 years, and that term begins on the first Monday of January next following the general election at which the justice or judge was chosen to succeed himself.*

*3. If a justice or judge does not declare his candidacy, or if less than ~~60~~ 55 percent of the votes cast on the question are cast in favor of the justice or judge succeeding himself, a vacancy is created at the expiration of his term which must be filled by appointment pursuant to Section 20 of this Article.*

*4. Each justice or judge who declares his candidacy to succeed himself must be reviewed by a commission on judicial performance. The review must consist of an examination of the record of the justice or judge and at least one interview of the justice or judge at which the commission discusses with the justice or judge any areas of performance in which the justice or judge needs to improve. At the conclusion of the review, the members of the commission must vote on the question of whether the commission recommends that the justice or judge succeed himself. Not later than 6 weeks before the general election at which the question of whether the justice or judge shall succeed himself is presented, the commission shall prepare and release to the public a report which provides a summary of the findings of the commission, the recommendation of the commission on the question of whether the justice or judge should succeed himself, the rationale for the recommendation and the result of the vote by which the commission made the recommendation. The vote of an individual member of the commission must not be disclosed to the public.*

*5. Each justice of the Supreme Court and judge of the court of appeals, if established by the Legislature, must be reviewed by the permanent Commission on Judicial Performance, composed of:*

*(a) The Chief Justice or an associate justice designated by him, but if the Commission is reviewing a justice of the Supreme Court, the Chief Justice or associate justice designated to be a member of the Commission is disqualified and the other members of the Commission shall select a judge of the district court to take the place of the disqualified member of the Commission for the sole purpose of reviewing justices of the Supreme Court;*

(b) *Two members of the State Bar of Nevada, a public corporation created by statute, appointed by its Board of Governors; and*

(c) *Two persons, not members of the legal profession, appointed by the Governor.*

6. *Each judge of the district court must be reviewed by a temporary commission on judicial performance, composed of:*

(a) *The permanent Commission on Judicial Performance;*

(b) *Two members of the State Bar of Nevada resident in the judicial district of the judge being reviewed, appointed by the Board of Governors of the State Bar of Nevada; and*

(c) *Two residents of the judicial district of the judge being reviewed, not members of the legal profession, appointed by the Governor.*

7. *If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this State, the Legislature shall provide by law, or if it fails to do so the Supreme Court shall provide by rule, for the appointment of attorneys at law to the positions designated in this Section to be occupied by members of the State Bar of Nevada.*

8. *The term of office of each appointive member of the permanent Commission, except the first members, is 4 years. Each appointing authority shall appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. The additional members of a temporary commission must be appointed when a review is required, and their terms expire when the review has been completed.*

9. *An appointing authority shall not appoint to the permanent Commission more than:*

(a) *One resident of any county.*

(b) *One member of the same political party.*

↪ *No member of the permanent Commission may be a member of a commission on judicial selection or the Commission on Judicial Discipline.*

And be it further

RESOLVED, That Section 3 of Article 6 of the Nevada Constitution be amended to read as follows:

~~[Sec: 3. The justices of the Supreme Court, shall be elected by the qualified electors of the State at the general election, and shall hold office for the term of six years from and including the first Monday of January next succeeding their election; provided, that there shall be elected, at the first election under this Constitution, three justices of the Supreme Court who shall hold office from and including the first Monday of December A.D., eighteen hundred and sixty four, and continue in office thereafter, two, four and six years respectively, from and including the first~~

~~Monday of January next succeeding [succeeding] their election. They shall meet as soon as practicable after their election and qualification, and at their first meeting shall determine by lot, the term of office each shall fill, and the justice drawing the shortest term shall be Chief Justice, and after the expiration of his term, the one having the next shortest term shall be Chief Justice, after which the senior justice in commission shall be Chief Justice; and in case the commission of any two or more of said justices shall bear the same date, they shall determine by lot, who shall be Chief Justice.]~~

*Sec. 3. The justice of the Supreme Court who is senior in commission shall be Chief Justice. If the commissions of any two or more justices bear the same date, they shall determine by lot who is Chief Justice.*

And be it further

RESOLVED, That Section 5 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 5. The State is hereby divided into nine judicial districts of which the County of Storey shall constitute the First; The County of Ormsby the Second; the County of Lyon the Third; The County of Washoe the Fourth; The Counties of Nye and Churchill the Fifth; The County of Humboldt the Sixth; The County of Lander the Seventh; The County of Douglas the Eighth; and the County of Esmeralda the Ninth. The County of Roop shall be attached to the County of Washoe for judicial purposes until otherwise provided by law. The Legislature may, however, provide by law for an alteration in the boundaries or divisions of the districts herein prescribed, and also for increasing or diminishing the number of the judicial districts and judges therein. But no such change shall take effect, except in case of a vacancy, or the expiration of the term of an incumbent of the [office. At the first general election under this Constitution there shall be elected in each of the respective districts (except as in this Section hereafter otherwise provided) one district judge, who shall hold office from and including the first Monday of December A.D., eighteen hundred and sixty four and until the first Monday of January in the year eighteen hundred and sixty seven. After the said first election, there shall be elected at the general election which immediately precedes the expiration of the term of his predecessor, one district judge in each of the respective judicial districts (except in the First District as in this Section hereinafter provided.) The district judges shall be elected by the qualified electors of their respective districts, and shall hold office for the term of 6 years (excepting those elected at said first election) from and including the first Monday of January, next succeeding their election and qualification; provided, that the First Judicial District shall be entitled to, and shall have three district judges, who shall possess] *office of district judge. In a judicial district with more than one district judge, each judge possesses co-extensive and concurrent jurisdiction,*

and ~~[who shall be elected at the same times, in the same manner, and shall hold office for the like terms as herein prescribed, in relation to the judges in other judicial districts, any one of said]~~ *any of those* judges may preside on the ~~[empanneling [empaneling]]~~ *empaneling* of grand juries and the presentment and trial on indictments ~~[, under such rules and regulations as may be]~~ *in the manner* prescribed by law.

And be it further

RESOLVED, That Section 15 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec . ~~[.]~~ 15. The justices of the Supreme Court and district judges shall each receive for their services a compensation to be fixed by law and paid in the manner provided by law, which shall not be increased or diminished during the term for which they shall have been elected ~~[,]~~ *or appointed*, unless a vacancy occurs, in which case the successor of the former incumbent shall receive only such salary as may be provided by law at the time of his election or appointment; and provision shall be made by law for setting apart from each year's revenue a sufficient amount of money, to pay such compensation.

And be it further

RESOLVED, That Section 20 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 20. 1. When a vacancy occurs ~~[before the expiration of any term of office]~~ *for any reason* in the Supreme Court *or the court of appeals, if established by the Legislature*, or among the district judges, ~~[the Governor shall appoint a justice or judge from among three nominees selected for such individual vacancy by]~~ the Commission on Judicial Selection ~~[.]~~ *shall select three nominees for the vacancy within 60 days after the vacancy occurs. The Commission shall provide the names of the three nominees to the Governor and the public. The Governor may:*

(a) *Appoint a justice or judge from among the three nominees selected for the vacancy by the Commission on Judicial Selection; or*

(b) *Reject all three nominees.*

2. *After the expiration of 30 days from the date on which the Commission on Judicial Selection has delivered to him its list of nominees for any vacancy, if the Governor has not appointed a justice or judge or rejected all the nominees, he shall make no other appointment to any public office until he has appointed a justice or judge from the list submitted.*

3. *If the Governor rejects all three nominees selected for the vacancy by the Commission on Judicial Selection, the Commission shall select three additional nominees for the vacancy within 60 days after the date of the rejection. The Commission shall provide the names of the three additional nominees to the Governor and the public. The Governor must appoint a*

*justice or judge from among the three additional nominees selected for the vacancy by the Commission on Judicial Selection.*

4. *After the expiration of 30 days from the date on which the Commission on Judicial Selection has delivered to him its list of additional nominees for any vacancy, if the Governor has not made the appointment required by subsection 3, he shall make no other appointment to any public office until he has appointed a justice or judge from the list of additional nominees submitted by the Commission on Judicial Selection.*

5. The *initial* term of office of any justice or judge ~~[so]~~ appointed pursuant to this Section expires on the first Monday of January following the ~~[next general election.~~

~~3.]~~ *first general election that is held at least 12 calendar months after the date on which the appointment was made.*

6. Each nomination for the Supreme Court shall be made by the permanent Commission, composed of:

- (a) The Chief Justice or an associate justice designated by him;
- (b) ~~[Three]~~ *Four* members of the State Bar of Nevada, a public corporation created by statute, appointed by its Board of Governors; and
- (c) ~~[Three]~~ *Four* persons, not members of the legal profession, appointed by the Governor.

~~[4.]~~ 7. Each nomination for the district court shall be made by a temporary commission composed of:

- (a) The permanent Commission;
- (b) ~~[A member]~~ *Two members* of the State Bar of Nevada resident in the judicial district in which the vacancy occurs, appointed by the Board of Governors of the State Bar of Nevada; and
- (c) ~~[A resident of such]~~ *Two residents of that* judicial district, not ~~[a member]~~ *members* of the legal profession, appointed by the Governor.

~~[5.]~~ 8. If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this State, the Legislature shall provide by law, or if it fails to do so the *Supreme* Court shall provide by rule, for the appointment of attorneys at law to the positions designated in this Section to be occupied by members of the State Bar of Nevada.

~~[6.]~~ 9. The term of office of each appointive member of the permanent Commission, except the first members, is 4 years. Each appointing authority shall appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. The additional members of a temporary commission shall be appointed when a vacancy occurs, and their terms shall expire when the nominations for such vacancy have been transmitted to the Governor.

~~[7.]~~ 10. An appointing authority shall not appoint to the permanent Commission more than:

- (a) One resident of any county.
- (b) Two members of the same political party.

↪ No member of the permanent Commission may be a member of a *commission on judicial performance or the Commission on Judicial Discipline*.

~~[8.—After the expiration of 30 days from the date on which the Commission on Judicial Selection has delivered to him its list of nominees for any vacancy, if the Governor has not made the appointment required by this Section, he shall make no other appointment to any public office until he has appointed a justice or judge from the list submitted.~~

~~↪ If a commission on judicial selection is established by another section of this Constitution to nominate persons to fill vacancies on the Supreme Court, such commission shall serve as the permanent Commission established by subsection 3 of this Section.]~~

And be it further

RESOLVED, That Section 21 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 21. 1. A justice of the Supreme Court, a district judge, a justice of the peace or a municipal judge may, in addition to the provision of Article 7 for impeachment, be censured, retired, removed or otherwise disciplined by the Commission on Judicial Discipline. Pursuant to rules governing appeals adopted by the Supreme Court, a justice or judge may appeal from the action of the Commission to the Supreme Court, which may reverse such action or take any alternative action provided in this subsection.

2. The Commission is composed of:

- (a) Two justices or judges appointed by the Supreme Court;
- (b) Two members of the State Bar of Nevada, a public corporation created by statute, appointed by its Board of Governors; and
- (c) Three persons, not members of the legal profession, appointed by the Governor.

↪ The Commission shall elect a Chairman from among its three lay members.

3. If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this State, the Legislature shall provide by law, or if it fails to do so the *Supreme Court* shall provide by rule, for the appointment of attorneys at law to the positions designated in this Section to be occupied by members of the State Bar of Nevada.

4. The term of office of each appointive member of the Commission, except the first members, is 4 years. Each appointing authority shall appoint

one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. An appointing authority shall not appoint more than one resident of any county. The Governor shall not appoint more than two members of the same political party. No member may be a member of a *commission on judicial performance* or a commission on judicial selection.

5. The Legislature shall establish:

(a) In addition to censure, retirement and removal, the other forms of disciplinary action that the Commission may impose;

(b) The grounds for censure and other disciplinary action that the Commission may impose, including, but not limited to, violations of the provisions of the Code of Judicial Conduct;

(c) The standards for the investigation of matters relating to the fitness of a justice or judge; and

(d) The confidentiality or nonconfidentiality, as appropriate, of proceedings before the Commission, except that, in any event, a decision to censure, retire or remove a justice or judge must be made public.

6. The Supreme Court shall adopt a Code of Judicial Conduct.

7. The Commission shall adopt rules of procedure for the conduct of its hearings and any other procedural rules it deems necessary to carry out its duties.

8. No justice or judge may by virtue of this Section be:

(a) Removed except for willful misconduct, willful or persistent failure to perform the duties of his office or habitual intemperance; or

(b) Retired except for advanced age which interferes with the proper performance of his judicial duties, or for mental or physical disability which prevents the proper performance of his judicial duties and which is likely to be permanent in nature.

9. Any matter relating to the fitness of a justice or judge may be brought to the attention of the Commission by any person or on the motion of the Commission. The Commission shall, after preliminary investigation, dismiss the matter or order a hearing to be held before it. If a hearing is ordered, a statement of the matter shall be served upon the justice or judge against whom the proceeding is brought. The Commission in its discretion may suspend a justice or judge from the exercise of his office pending the determination of the proceedings before the Commission. Any justice or judge whose removal is sought is liable to indictment and punishment according to law. A justice or judge retired for disability in accordance with this Section is entitled thereafter to receive such compensation as the Legislature may provide.

10. If a proceeding is brought against a justice of the Supreme Court, no justice of the Supreme Court may sit on the Commission for that proceeding.

If a proceeding is brought against a district judge, no district judge from the same judicial district may sit on the Commission for that proceeding. If a proceeding is brought against a justice of the peace, no justice of the peace from the same township may sit on the Commission for that proceeding. If a proceeding is brought against a municipal judge, no municipal judge from the same city may sit on the Commission for that proceeding. If an appeal is taken from an action of the Commission to the Supreme Court, any justice who sat on the Commission for that proceeding is disqualified from participating in the consideration or decision of the appeal. When any member of the Commission is disqualified by this subsection, the Supreme Court shall appoint a substitute from among the eligible judges.

11. The Commission may:

- (a) Designate for each hearing an attorney or attorneys at law to act as counsel to conduct the proceeding;
- (b) Summon witnesses to appear and testify under oath and compel the production of books, papers, documents and records;
- (c) Grant immunity from prosecution or punishment when the Commission deems it necessary and proper in order to compel the giving of testimony under oath and the production of books, papers, documents and records; and
- (d) Exercise such further powers as the Legislature may from time to time confer upon it.

Assemblyman Horne moved the adoption of the amendment.

Amendment adopted.

Resolution ordered reprinted, engrossed and to the General File.

Senate Bill No. 196.

Bill read third time.

The following amendment was proposed by Assemblymen Hardy and Segerblom:

Amendment No. 927.

SUMMARY—Revises provisions relating to ~~the Department of Cultural Affairs;~~ **organizations for the promotion of culture.** (BDR 18-548)

AN ACT relating to ~~the Department of Cultural Affairs;~~ **organizations for the promotion of culture;** limiting the total face amount of bonds that the Commission for Cultural Affairs may issue annually to provide financial assistance for the preservation and promotion of cultural resources; exempting artifacts donated to the Department of Cultural Affairs from the procedures otherwise applicable to state agencies for the acceptance of gifts or grants of property or services; **exempting certain property from taxation;** changing the name of the Nevada State Museum and Historical Society; and providing other matters properly relating thereto.

41.600 1. An action may be brought by any person who is a victim of consumer fraud.

2. As used in this section, “consumer fraud” means:

- (a) An unlawful act as defined in NRS 119.330;
- (b) An unlawful act as defined in NRS 205.2747;
- (c) An act prohibited by NRS 482.36655 to 482.36667, inclusive;
- (d) An act prohibited by NRS 482.351; or
- (e) A deceptive trade practice as defined in NRS 598.0915 to 598.0925, inclusive [–], *and sections 2 and 4.7 of this act.*

3. If the claimant is the prevailing party, the court shall award him:

- (a) Any damages that he has sustained; and
- (b) His costs in the action and reasonable attorney’s fees.

4. Any action brought pursuant to this section is not an action upon any contract underlying the original transaction.

Assemblyman Conklin moved the adoption of the amendment.

Remarks by Assemblyman Conklin.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Senate Bill No. 412.

Bill read third time.

Remarks by Assemblyman Mabey.

Roll call on Senate Bill No. 412:

YEAS—41.

NAYS—None.

EXCUSED—Christensen.

Senate Bill No. 412 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Joint Resolution No. 2.

Resolution read third time.

Roll call on Senate Joint Resolution No. 2:

YEAS—30.

NAYS—Anderson, Beers, Carpenter, Mabey, Manendo, Ocegüera, Ohrenschall, Parnell, Smith, Stewart, Weber—11.

EXCUSED—Christensen.

Senate Joint Resolution No. 2 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Resolution ordered transmitted to the Senate.

Assemblyman Ocegüera moved that the Assembly recess subject to the call of the Chair.

Motion carried.

# BILLS AND AMENDMENTS

SEE LINKS ON BILL HISTORY PAGE  
FOR COMPLETE TEXT

# SJR 2\* of the 74th Session - 2009

Introduced in the Senate on Feb 02, 2009.

By: (**Bolded** name indicates primary sponsorship)

**Raggio** , **Hardy** , **Care** , **Coffin** , **Carlton** , Amodei , Mathews , Nolan , Titus , Townsend

Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges.  
(BDR C-177)

## Fiscal Notes

Effect on Local Government: No  
Effect on State: No.

**Most Recent History Action:** File No. 87.  
(See full list below)

## Past Hearings

Senate Judiciary	Feb. 23, 2009	09:00 AM	<b>Minutes</b>	No Action.
Senate Finance	Mar. 09, 2009	08:00 AM	<b>Minutes</b>	Mentioned No Jurisdiction.
Senate Judiciary	Mar. 12, 2009	08:30 AM	<b>Minutes</b>	Do pass.
Assembly Elections, Procedures, Ethics, and Constitutional Amendments	Apr. 30, 2009	03:45 PM	<b>Minutes</b>	No Action.
Assembly Elections, Procedures, Ethics, and Constitutional Amendments	May. 12, 2009	03:45 PM	<b>Minutes</b>	Do pass.

## Votes

**Senate Final Passage** Mar. 25 Yea 14, Nay 7, Excused 0, Not Voting 0, Absent 0  
**Assembly Final Passage** May. 20 Yea 29, Nay 13, Excused 0, Not Voting 0, Absent 0

**Bill Text** [As Introduced](#) [As Enrolled](#)  
**Statutes of Nevada 2009** [File No. 87](#)

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## Bill History

### Feb 02, 2009

- Returned from Secretary of State.
- Read first time. Referred to Committee on Judiciary. To printer.
- From printer. To committee.

### Mar 13, 2009

- From committee: Do pass.

### Mar 16, 2009

- Read second time.

### Mar 17, 2009

- Taken from General File. Placed on General File for next legislative day.

### Mar 19, 2009

- Taken from General File. Placed on General File for next legislative day.

**Mar 23, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Mar 24, 2009**

- Taken from General File. Placed on General File for next legislative day.

**Mar 25, 2009**

- Read third time. Passed. Title approved. (Yeas: 14, Nays: 7.) To Assembly.

**Mar 27, 2009**

- In Assembly.
- Read first time. Referred to Committee on Elections, Procedures, Ethics, and Constitutional Amendments. To committee.

**May 13, 2009**

- From committee: Do pass.
- Placed on Second Reading File.
- Read second time.

**May 15, 2009**

- Taken from General File. Placed on General File for next legislative day.

**May 16, 2009**

- Taken from General File. Placed on General File for next legislative day.

**May 18, 2009**

- Taken from General File. Placed on General File for next legislative day.

**May 20, 2009**

- Read third time. Passed. Title approved. (Yeas: 29, Nays: 13.) To Senate.

**May 21, 2009**

- In Senate. To enrollment.

**May 22, 2009**

- Enrolled and delivered to Secretary of State.
- File No. 87.
- **(On 2010 Ballot)**



PREPARED BY  
RESEARCH DIVISION  
LEGISLATIVE COUNSEL BUREAU  
Nonpartisan Staff of the Nevada State Legislature

**BILL SUMMARY**  
75<sup>th</sup> REGULAR SESSION  
OF THE NEVADA STATE LEGISLATURE

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**SENATE JOINT RESOLUTION NO. 2**  
**OF THE 74<sup>TH</sup> SESSION (Enrolled)**  
Pertains to the Selection of Justices and Judges

**Summary**

Senate Joint Resolution No. 2 of the 74th Session of the Nevada Legislature proposes to amend the *Nevada Constitution* to provide for the initial appointment of Supreme Court justices and District Court judges, followed by a retention election by the voters in Nevada. An initial appointment is made by the Governor from candidates chosen by the Commission on Judicial Selection. This appointment expires on the first Monday of January following the General Election that occurs at least 12 months after appointment.

Upon declaration of candidacy for retention, a justice or judge must undergo a performance review by the newly created Commission on Judicial Performance. The Commission must issue a report to the public of its review and recommendation prior to the retention election. If 55 percent of the votes cast are in favor of retention, the justice or judge serves a six-year term and is subject to another retention election and performance review at the end of each six-year term. If he does not declare his candidacy or receives less than 55 percent of the votes cast, the vacancy is again filled through the appointment process.

**Effective Date**

This measure was approved in identical form during the 2007 and 2009 Sessions of the Legislature. The proposal will be submitted to the voters for final approval or disapproval at the 2010 General Election.

# LEGISLATIVE HEARINGS

MINUTES AND EXHIBITS

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session  
February 23, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 9:06 a.m. on Monday, February 23, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair  
Senator Valerie Wiener, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Mike McGinness  
Senator Maurice E. Washington  
Senator Mark E. Amodei

**GUEST LEGISLATORS PRESENT:**

Senator William J. Raggio, Washoe County Senatorial District No. 3

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Bradley A. Wilkinson, Chief Deputy Legislative Counsel  
Kathleen Swain, Committee Secretary

**OTHERS PRESENT:**

Thomas F. Kummer  
The Honorable James W. Hardesty, Chief Justice, Nevada Supreme Court  
Bruce T. Beesley, State Bar of Nevada  
William F. Dressel, Cochair, Article 6 Commission of the Nevada Supreme Court  
James T. Richardson, J.D., Ph.D., Director, Grant Sawyer Center for Justice Studies and Judicial Studies Program, University of Nevada, Reno

Senate Committee on Judiciary  
February 23, 2009  
Page 2

Samuel P. McMullen, Las Vegas Chamber of Commerce  
John Wagner, Independent American Party  
Lynn Chapman, Nevada Families  
David Schumann, Nevada Committee for Full Statehood  
Janine Hansen, Nevada Eagle Forum  
Warren Russell, Elko County Commissioner  
Juanita Clark, Charleston Neighborhood Preservation  
Fred Hillerby, MasterCard Worldwide  
Lisa Corrado, Redevelopment Project Manager, City of Henderson  
Chris MacKenzie, American Express Corporation  
Sabra Smith-Newby, Director, Department of Administrative Services, Clark  
County  
Bill Uffelman, Nevada Bankers Association  
Lea Tauchen, Director of Government Affairs, Grocery and General  
Merchandise, Retail Association of Nevada  
Chuck Callaway, Sergeant, Intergovernmental Services, Las Vegas Metropolitan  
Police Department  
Ira Victor, InfraGard, Sierra Nevada Alliance  
Rebecca Gasca, American Civil Liberties Union of Nevada  
Helen Foley, T-Mobile USA

CHAIR CARE:

The hearing is open on Senate Joint Resolution (S.J.R.) 2 of the 74th Session.

**SENATE JOINT RESOLUTION 2 OF THE 74th SESSION:** Proposes to amend the  
Nevada Constitution to revise provisions relating to the selection of  
justices and judges. (BDR C-177)

SENATOR WILLIAM J. RAGGIO (Washoe County Senatorial District No. 3):

I have submitted material to you in (Exhibit C, original is on file in the  
Research Library). I present my written testimony in (Exhibit D).

The original version of this measure required a justice or judge to win by  
60 percent of the votes cast in the election. The Assembly amended this last  
Session to 55 percent of the votes cast in the election. There is a big difference  
between this resolution and others previously on the ballot.

As Legislators, we are expected to have some opinions and to tell people how we stand on particular issues. That is not true when running for a judicial seat. People need to see judicial candidates as fair, impartial and independent.

Any lawyer with five years of experience can put his or her name on the ballot. This measure improves the performance, recommendations and reports that were not in earlier versions of this proposal.

Let us strive to achieve an independent judiciary.

THOMAS F. KUMMER:

I support S.J.R. 2 of the 74th Session. This has been needed for quite some time. I am familiar with the Missouri Plan method of selecting judges. I have never been in favor of judges and justices having to stand for election. It creates the aura of impropriety and potential conflicts.

Under S.J.R. 2 of the 74th Session, qualified lawyers will apply for the positions of judge or justice. There will be a screening process. The commission is broad-based with lawyers, legislators and citizenry who will make these decisions. They will look at reports and determine whether the judge should stand for retention.

Trial lawyers practicing in the courtroom need 10 or 15 years of experience to acquire the qualifications to sit in judgment of others on many of the complicated issues we face today. The process of raising money to run for a judicial position should be eliminated in order to have judges and justices who are neutral, fair, impartial and independent.

Thirty years ago we were representing a high-profile client against a high-profile corporate citizen of Nevada in a summary judgment process. The court disclosed that it was in discussion with the other party about a campaign contribution. The court did not disqualify itself, and we proceeded. The motion was heard, and our summary judgment motion was denied. We filed a motion for rehearing, and the court recused itself on the basis it had received a substantial contribution from the other party. We sought the rehearing before another judge who reversed the decision and granted the summary judgment, which was ultimately affirmed on appeal. The appearance of impropriety was present in this example.

Most judges are free of any bias or prejudice. The time and effort it takes to stand for election is wasted time. A judge should be doing the people's business, which is sitting as an unbiased arbiter of the facts of a case.

THE HONORABLE JAMES W. HARDESTY (Chief Justice, Nevada Supreme Court):

I am not here in my capacity as Chief Justice because the judiciary does not take a position on this bill. It is up to the voters and the Legislature to decide how judges should be selected.

I was elected to the bench, not appointed. In my personal opinion, this measure would make an improvement in the manner we select judges in our State.

Under the elective system, a judge who runs for reelection can be elected on his or her own vote if unopposed. Approximately 64 percent of the judges in this State ran last year unopposed.

This bill would require any judge who is unopposed to stand for a retention election. This bill increases the public's ability to vote on the retention of a judge in a future elective process.

SENATOR AMODEI:

To what do you attribute the fact nobody is running against these judges? Is that an indication of the job people think the judge is doing?

CHIEF JUSTICE HARDESTY:

There may be some of that, but not always.

SENATOR AMODEI:

Do you have any articles indicating that unopposed judges are not doing a good job?

CHIEF JUSTICE HARDESTY:

No. I have the opinion of judges who work with judges running for reelection. There may be a difference of opinion among the judges about whether that individual should be reelected.

This bill includes a provision requiring an evaluation of a judge's performance. Judicial evaluations appear in the *Las Vegas Review-Journal* every other year. This is a survey of lawyers. The Washoe County Bar Association conducts a

similar evaluation every two years, which is also a survey of lawyers. An issue in these evaluations is a statement under the honor system by the lawyer that he or she has actually appeared in front of the judge and has knowledge of the judge's performance.

The judicial performance provisions in this measure are a broader-based evaluation of judges' performance. It considers the input from lawyers, staff, jurors, witnesses and colleagues. This is an improvement to the judicial performance evaluations of a judge.

My comments today in support of this measure provide no change in my reelection. If this bill is passed through the Legislature, it will be presented to the voters in 2010. My term expires in January 2011. I will have to run for reelection next year.

When I ran for the Supreme Court, I had to raise over \$750,000. A campaign contribution has never influenced my decision in any case. The appearance of impropriety is a greater problem than the actual impropriety itself.

As Chief Justice, I chair the Commission on Judicial Selection (Selection Commission). We recently interviewed 15 applicants for the two vacant Family Court positions in Las Vegas. The process provides an in-depth examination of the applicant—scholastic effort, achievement and transcripts. Writing samples are required by the Selection Commission and are tested. The Selection Commission requires the disclosure of an applicant's professional achievements, which are tested and vetted. A personal background of all the applicants is conducted, including information about their health, their credit checks and their criminal background.

By rule, the Nevada Supreme Court and the Selection Commission endorsed the process used in Arizona to vet these candidates publicly. All interviews were conducted in public, and public comment was permitted. The voting process for the recommendation of the candidates to the Governor also occurred in public. The Commission is allowed to discuss a candidate's personal and private information in an executive session.

SENATOR WIENER:

Can you give us a sense of the time taken away from your public duty as a judge to raise money and campaign for election?

CHIEF JUSTICE HARDESTY:

I can only speak to my personal experience, but I have witnessed the time constraints on my colleagues who participate in an election campaign. When I ran for the Nevada Supreme Court, I was also Chief Judge of the Second Judicial District Court. During my campaign for the Nevada Supreme Court, the public got their 40 to 50 hours per week, and I added 40 hours. It takes a personal toll on a judge to campaign statewide. This measure would alleviate some of that.

Judges involved in the process try to reduce the appearance of impropriety associated with collecting money. The fact is you spend a lot of time soliciting funds to support the campaign.

SENATOR WASHINGTON:

Regarding the Arizona process you mentioned earlier, was the public permitted to comment on a particular candidate being considered for a judgeship?

CHIEF JUSTICE HARDESTY:

Absolutely, and during the Selection Commission's most recent interviews, the public was able to comment about candidates three times during the meetings. This process has influenced the selection of other judicial candidates. As Chief Justice, I am chairing the committee that will recommend the new Justices of the Peace to the Clark County Commission. That committee has voted to conduct their process the same as the Selection Commission. Their entire process will be public.

SENATOR AMODEI:

Have you talked with people who have done this in other areas? I have a concern about the makeup of the Performance Commission. It is heavily weighted by members of the Bar. People have expressed concern to me regarding how much power the Performance Commission members would have. What is the power dynamic in this group of people who will have the ability to establish and maintain incumbency? Incumbency on the bench is a powerful thing in Nevada.

CHIEF JUSTICE HARDESTY:

The lay people on the Selection Commission think they played a meaningful role in our recent interview process. This bill maintains a substantial number of nonlawyers on the Performance Commission. The lay people on the Selection

Commission took an active role in reviewing the applications, the questioning of the applicants and the voting process.

SENATOR AMODEI:

I am not talking about the individuals who are doing it. The lay people are excellent people and doing an excellent job. However, the framework of the Performance Commission is weighted in favor of State Bar members. The evaluation process is a good idea regardless of who ultimately selects a judge. However, you are telling people that their ability to vote will be supplanted by an organization smaller than the voting process. That is a concern to many people.

CHIEF JUSTICE HARDESTY:

We will be one of a few states to impose a super-majority requirement for retention. The 55-percent requirement is significant. A study was done in Alaska, which showed that a super-majority requirement may result in more judges being removed from office than being retained. Interest groups only need 46 percent of the vote to prevent the retention of a judge. In contrast, if someone runs unopposed, he or she only needs one vote to be retained.

Regardless of the outcome of S.J.R. 2 of the 74th Session, the Nevada Supreme Court is working with the Grant Sawyer Center for Justice Studies on a pilot program for the judicial performance system. We need this to evaluate judges throughout the State and to broaden the input of people who come in contact with the judicial system. It would be helpful to institutionalize that in the *Constitution of the State of Nevada*. The retention process could eliminate an individual based upon a written report that a judge is not performing as the public perceived.

SENATOR AMODEI:

Are there mechanisms available to stress performance without taking away the ability to stand for election in a more traditional sense? Someone recently expressed to me this creates the presumption that when you reach incumbency stage, you have even more of an advantage that an incumbent does now.

CHIEF JUSTICE HARDESTY:

There is less. Most lawyers will not run against an incumbent judge. We do not have an institutionalized judicial performance evaluation that tests the skills of an incumbent judge.

SENATOR AMODEI:

How does that work when you have an open seat?

CHIEF JUSTICE HARDESTY:

When there is an open seat, they go through the process we just went through.

SENATOR AMODEI:

Do you have one person recommended?

CHIEF JUSTICE HARDESTY:

There are three candidates recommended to the Governor, who selects the candidate.

SENATOR AMODEI:

There is no voting involved in that. The Governor selects the candidate. If this measure is in place when that person comes to the voters the first time, he is retained or not retained.

CHIEF JUSTICE HARDESTY:

But that individual serves for one to two years. They are subject to a judicial performance during the time they served. They have to get a 55-percent retention vote.

SENATOR AMODEI:

Do you think we have learned anything from the none-of-the-above choice that has been available in the Supreme Court context? People have had the opportunity to express displeasure. I recall that the none-of-the-above choice has reached about 20 percent.

CHIEF JUSTICE HARDESTY:

If you compare election results, you will find that none of the above has garnered between 18 percent and 25 percent in the Nevada Supreme Court races, whether it is contested or uncontested.

SENATOR AMODEI:

There was an opponent. I am just talking about none of the above for someone running without an opponent. Is there anything to be gleaned from that?

CHIEF JUSTICE HARDESTY:

Yes, in other states. Alaska has a lot of information on this subject that we can share with the Committee.

BRUCE T. BEESLEY (State Bar of Nevada):

To have an effective judicial system, you must have fair and impartial judges. Even more importantly, the citizenry must believe the judges are fair and impartial. That is not the case in the current system. I am regularly asked by clients whether the judge was bribed and whether the judge's decision was influenced by campaign contributions.

These questions are corrosive to our system. As long as lawyers and business people fund most judicial elections, people will not believe they are getting a fair shake.

People do not get very much information about candidates. The television advertisements, which are the mainstay of judicial elections, do not give much information on whether a candidate will be a good judge.

It takes hundreds of thousands of dollars to run for election. A tremendous toll is taken on the business of the State in having so much money spent on election purposes.

WILLIAM F. DRESSEL (Cochair, Article 6 Commission of the Nevada Supreme Court):

The Article 6 Commission vote was overwhelmingly in support of S.J.R. 2 of the 74th Session. The voters are gaining a more informed vote because a candidate's performance is evaluated.

Removing the taint of money is another gain. Several polls have said 69 percent of the public think raising money for elections affects a judge's decision to a moderate or great degree. This bill takes the funding out of it. When everything is balanced, the gain outweighs the loss.

SENATOR AMODEI:

Does anything prohibit someone who did not like the sentence imposed in a criminal matter from campaigning against this person for retention?

MR. DRESSEL:  
No.

SENATOR AMODEI:  
If that person wants to be retained, does he not have to respond to that campaign? If we do this, an incumbent judge may still have to raise money to fight an attack such as this.

MR. BEESLEY:  
Nothing prevents that, although it is less common to have people sufficiently motivated to get enough support.

MR. DRESSEL:  
I was a judge in Colorado, and I went through four retention elections. I was a better judge because I was responding to what people were saying. The people of this State will be better served by this measure.

JAMES T. RICHARDSON, J.D., PH.D. (Director, Grant Sawyer Center for Justice Studies and Judicial Studies Program, University of Nevada, Reno):

I direct a jointly-sponsored graduate program for trial judges. It is given by the University of Nevada, Reno, and sponsored by the National Judicial College and the National Council of Juvenile and Family Court Judges. Every time a group of judges comes to a seminar, this issue comes up. The class always divides into two groups—one from states with retention elections and the other from states with contested elections. Those who run in contested states envy those who do not because of the fund-raising and its implications.

I have spoken with dozens of judges over the years about this problem. They feel it is corrosive in what they do as judges and debilitating in their effort to be good and neutral judges.

SAMUEL P. McMULLEN (Las Vegas Chamber of Commerce):

We support S.J.R. 2 of the 74th Session. My spouse, Mary-Ellen McMullen, has been a temporary member of the Selection Commission. I have been impressed with the process they go through. More importantly, she feels there is strong public input into this process. It is a great public process, and there is a lot of impact and participation from the public.

SENATOR RAGGIO:

I am providing you with a survey that comes from *Justice at Stake Campaign* (Exhibit E). I am referring to the slide titled Cynicism About Cash in the Courtroom in Exhibit E, page E2. Seventy-six percent of voters believe that campaign contributions have at least some influence on judges' decisions. Seventy-nine percent of business leaders agree. Twenty-six percent of state judges agree that campaign contributions influence decisions.

JOHN WAGNER (Independent American Party):

We oppose this bill. In the current system, we see these judges around the State. Lawyers are just as biased as anyone else when it comes to selection processes. Their biases will filter into this. We believe in the right of the people to select their candidate. A person should be able to run for office regardless of what any panel says.

LYNN CHAPMAN (Nevada Families):

We are opposed to S.J.R. 2 of the 74th Session. It is wrong to take away the people's right to vote on judges. We do not vote on United States Supreme Court Justices or federal judges. In our State, those judges are closest to the people. We should have the option to vote or not to vote for someone.

In late 2003, the Brooklyn, New York, District Attorney was investigating a party chairman, Clarence Norman. They were looking into whether the party was selling judgeships. For example, to become a Supreme Court judge in Brooklyn, New York, a candidate had to be selected by Chairman Norman. Those candidates are then referred to a screening panel that was also appointed by Chairman Norman. The 42 district leaders who often had strong ties to the party, screened the candidates. Finally, the judges were selected by a judicial convention made up of various friends, relatives, business partners and employees of the party overseen by Chairman Norman. Corruption can happen in carefully constructed ways of appointing judges.

At the International Association of Women Judges Conference in 2006, many argued that the elective system favors women and minorities who are not insiders and would never be appointed to the bench. When those outsiders are competent and talented, they can win elections. Deborah Agosti, former Nevada Supreme Court Justice, said she could never have become a judge, much less Chief Justice, in an appointive system.

DAVID SCHUMANN (Nevada Committee for Full Statehood):

Last Session the retention vote was lowered from 60 percent to 55 percent. I request that you raise the retention level back up to 60 percent. Then people will have a little more trust.

JANINE HANSEN (Nevada Eagle Forum):

I oppose S.J.R. 2 of the 74th Session. I believe in public service. We do not want the judiciary to be independent of the people. This bill will make the judiciary independent of the people.

Our National President, Phyllis Schlafly, has written a book about the imperial judiciary and how the federal judiciary is apart from the will of the people. We do not want an imperial judiciary in the State of Nevada. The Nevada Supreme Court issued *Guinn v. Nevada State Legislature*, 119 Nev. 277, 71 P.3d 1269 (2003), rehearing denied; opinion clarified, 119 Nev. 460, 76 P.3d 22 (2003). As a result of *Guinn*, a justice who ran for reelection in the next election was defeated.

When a controversial issue is brought to the attention of the people, they are smart enough to vote the right way. If there is no election, there cannot be a recall. Consequently, the people have no recourse. This Commission on Judicial Selection is a special interest group. It will be a closed shop, and the people will have very little representation and no scrutiny at the polls.

If this bill passes, how would we oppose someone who is on the bench? How do you highlight the issues or discuss them at a candidates' night when you cannot be on the candidate program because you are not the candidate? It is practically impossible to win against a retention campaign. You must raise money to oppose a judge as an individual rather than judges raising money to be elected.

We are extremely concerned about this closed shop. If people's right to vote is taken away, they would not believe you were acting in their best interests. I encourage you to consider the difficulty this poses to the people of Nevada. We ask you to vote no on S.J.R. 2 of the 74th Session.

WARREN RUSSELL (Elko County Commissioner):

I am an Elko County Commissioner. I oppose S.J.R. 2 of the 74th Session as a reflection of my county constituents. If you were running for a judicial position

in Elko County and you made it known that you favor appointment of judges, you would get very few votes.

Perhaps it might be appropriate to fund judicial campaigns with public funds. It sounds like qualifying candidates could use some improvement.

This bill would reflect negatively on the competency of voters to make good decisions. We replaced a judge two years ago in Elko County who functioned very well as a judge, but did not reflect the values of our community. This process allowed us to do that.

The retention system would promote mediocre judges. We would have a judge appointed for life, which is not necessarily good for the people. That judge would not be challenged unless he or she reaches an unfavorable decision in your county.

JUANITA CLARK (Charleston Neighborhood Preservation):

We oppose S.J.R. 2 of the 74th Session. There are three branches of government. It is wrong for a group to handpick candidates for one branch of government. Our neighborhood has candidate forums for judges. People do attend these forums, and they ask questions. Raising campaign money is just as demeaning to the other two branches of government as it is to the judicial branch. We have heard a lot of testimony today indicating the people do not vote correctly. Everything said in favor of this bill is a strong argument against it. Please think about the people's right to vote on whichever candidate they choose, and vote no on S.J.R. 2 of the 74th Session.

CHAIR CARE:

There being no further questions, the hearing is closed on S.J.R. 2 of the 74th Session. The hearing is open on Senate Bill (S.B.) 125.

**SENATE BILL 125**: Prohibits the unauthorized possession, reading or capturing of another person's personal identifying information through radio frequency identification. (BDR 15-481)

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):

I am the sponsor of S.B. 125. This bill deals with radio frequency identification technology (RFID). I do not intend to single out RFID for any kind of regulation or to promulgate any kind of ban on the use of this technology. Senate Bill 125

## DISCLAIMER

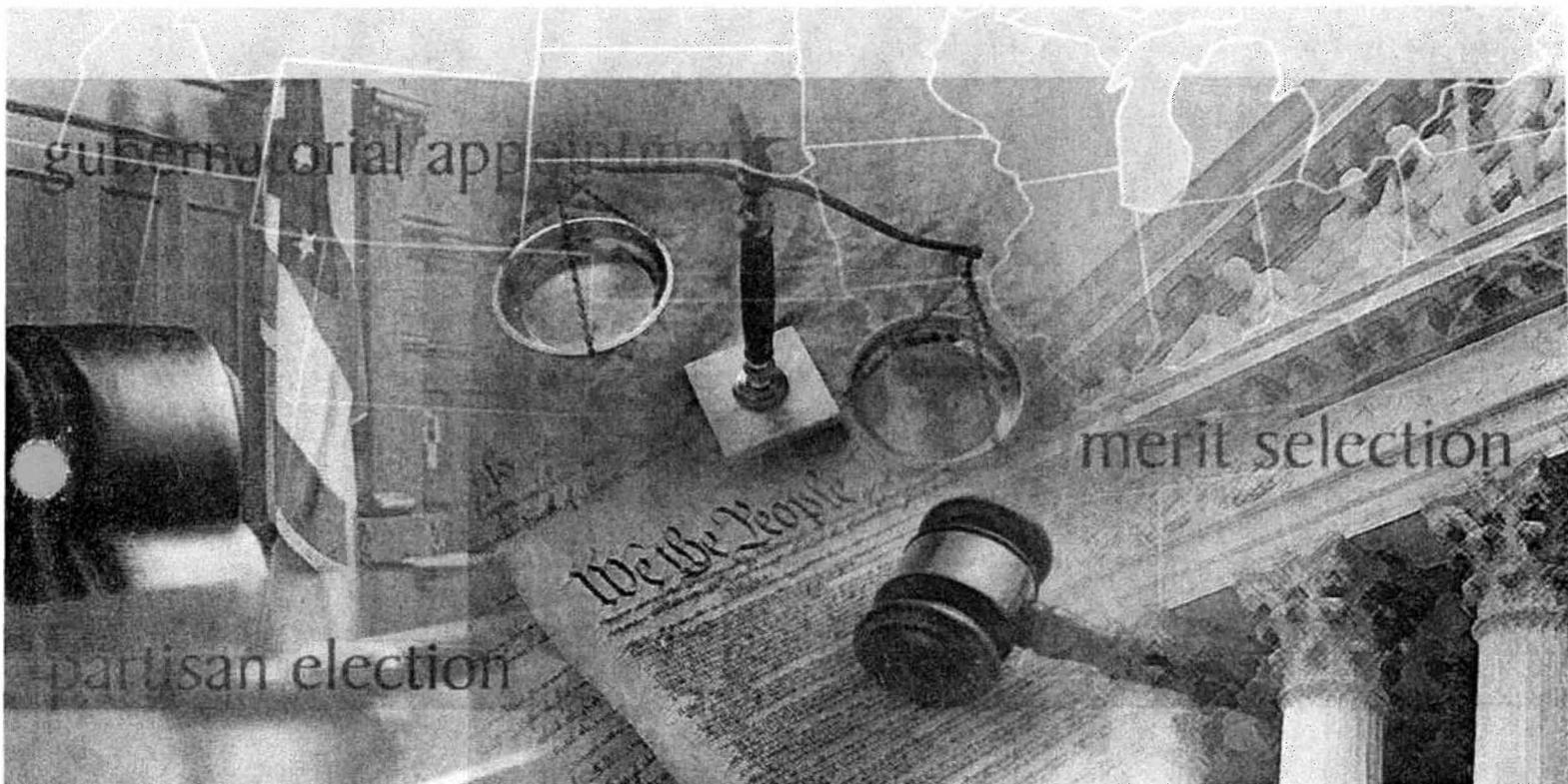
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Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or [library@lcb.state.nv.us](mailto:library@lcb.state.nv.us).

How It Works  
JUDICIAL SELECTION IN THE STATES  
Why it Matters



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The American Judicature Society (AJS) works to maintain the independence and integrity of the courts and increase public understanding of the justice system. We are a non-partisan organization with a national membership of judges, lawyers and other citizens interested in the administration of justice. AJS is headed by Executive Vice President Seth S. Andersen. For more information about AJS, please visit our website at [www.ajs.org](http://www.ajs.org).

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American Legal System

The debate over how America chooses its judges has escalated in the 21st century. Several states are evaluating their judicial selection systems with a view to altering their current processes. The United States Supreme Court has also contributed to this dialogue by rendering key decisions that impact this issue. While executive and legislative decision-makers grapple with concerns about the process for choosing judges from state-to-state, our citizens are seeking sound information and guidance on this vital topic—and for good reason. Our courts make decisions that affect virtually every aspect of our daily lives. This judicial selection guide was developed to provide greater clarity and understanding of this complex and critical issue. We are grateful for your interest.

I. The important roles of courts and judges . . . . . 2  
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IV. Ensuring impartial, fair, and high quality judges . . . . . 8



Every year, millions of Americans find themselves in state courts, whether called for jury service or to address a minor traffic offense or a small claims case. Sometimes, it's something more serious—they've been a victim of crime, they're facing criminal charges, or perhaps they're involved in a divorce or other family law matter.

Americans expect and deserve to be treated fairly in court. People who

**According to the National Center for State Courts, approximately 100 million cases are heard in state and local trial courts each year. Ninety-seven percent of the cases heard in the U.S. are handled by state judges.**

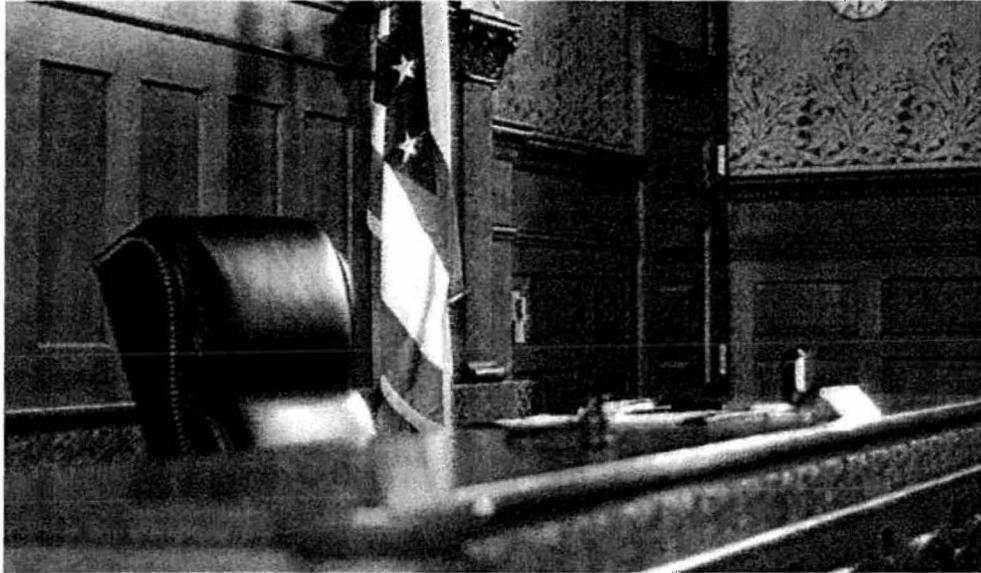
**The most important factor in determining the public's evaluations of state courts and judges is the perceived fairness of court processes. Americans value fairness in court processes more than they do fairness in case outcomes.**

Sources: *How the Public Views the State Courts* (National Center for State Courts, 1999); D.B. Rottman, *Public Trust and Confidence in the California Courts* (Administrative Office of the Courts, 2005).

have been in court express greater confidence in the judicial system, regardless of case outcomes, when they believe that the process is fair and transparent, that judges and court staff treat them with respect, and that they have a chance to be heard.

When asked about the role of courts, Americans consistently express a desire to maintain fair and impartial courts that effectively promote and protect individual rights under the law.

State legislators play a vital role in ensuring high quality courts that inspire public trust and confidence. They can propose changes to judicial selection and retention methods, or introduce reforms to improve these processes. They can create new judgeships and staff positions in response to increased caseloads. They can pass laws to reinforce court decisions or clarify legislative intent. They can express public support for the work of their judiciaries and act promptly to address threats to the courts should they arise. State legislators are critical actors in preserving the fairness, impartiality, and integrity of state courts.



Recent trends in the processes for selecting and retaining judges have generated concern among citizens who believe in the impartiality—and the appearance of impartiality—of courts and judges.

Judicial elections for the last decade have been characterized by unprecedented campaign fundraising and spending.

Special interest groups have ramped up their efforts to influence the composition of state courts, making contributions to candidates, funding television ads, and pressuring candidates to speak publicly about their political views.

**In the last four election cycles, candidates for state high courts have raised nearly double the amount raised by candidates in the 1990s.**

Source: *The New Politics of Judicial Elections 2006* (Justice at Stake Campaign, 2007).

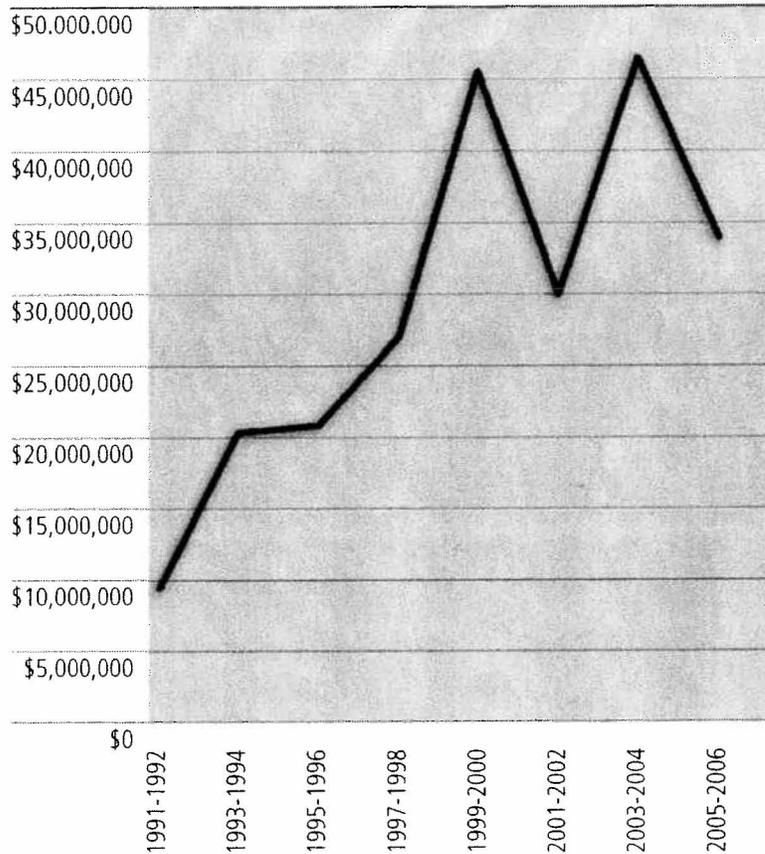
**In 2005-2006, 44% of the contributions to state high court candidates came from business groups, and 21% came from lawyers.**

Source: *The New Politics of Judicial Elections 2006* (Justice at Stake Campaign, 2007).

**Sixty-nine percent of the public thinks that raising money for elections affects a judge's rulings to a moderate or great extent.**

Source: *Public Understanding of and Support for the Courts* (Annenberg Public Policy Center, 2007).

**Candidate Fundraising in Judicial Elections 1991-2007**



Source: The National Institute on Money in State Politics, [www.followthemoney.org](http://www.followthemoney.org)

Recent court decisions have allowed judicial candidates to conduct campaigns that are similar to those waged by candidates for political offices.

For many citizens the line between the role of a judge and that of a politician has become blurred.

The extent to which judges are able to interpret and apply the law impartially depends upon their ability to remain free from undue political pressure. Judges are not politicians.



Across the nation, states use a variety of methods to select the judges who serve on their courts. There are five basic methods of judicial selection, but it is important to note that no two states use exactly the same selection method. In many states, more than one method of selection is used—for judges at different levels of the court system and even among judges serving at the same level. And when the same method is used, there are still variations in how the process works in practice.

**Commission-based appointment (also known as “merit selection,” “the Missouri Plan,” or the “Nonpartisan Court Plan”):** The process by which judicial applicants are evaluated by a nominating commission, which then sends the names of the best qualified candidates to the governor. The governor appoints one of the nominees submitted by the commission.

**Contested election:** An election in which multiple candidates may seek the same judicial position. Voters cast ballots for judicial candidates as they do for other public officials.

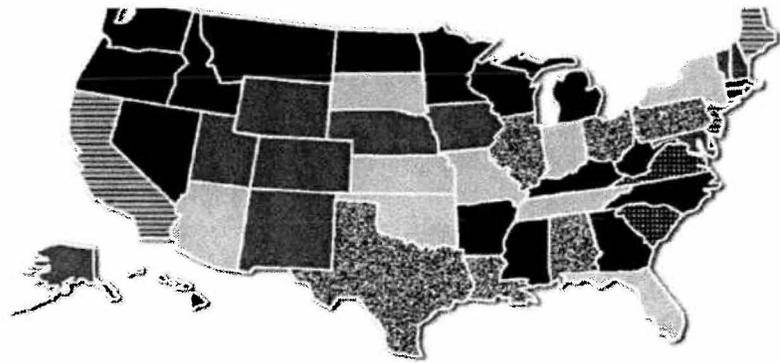
- **Nonpartisan election:** An election in which a judicial candidate’s party affiliation, if any, is not designated on the ballot.
- **Partisan election:** An election in which candidates run for a judicial position with the official endorsement of a political party. The candidate’s party affiliation is listed on the ballot.

**Gubernatorial appointment:** The process by which a judge is appointed by the governor (without a judicial nominating commission). The appointment may require confirmation by the legislature or an executive council.

**Legislative appointment/election:** The process by which judges are nominated and appointed or elected by legislative vote only.

**Formal Selection of Judges**

- Combined commissioned-based appointment & other\*
- Commission-based appointment
- Partisan election
- Non-partisan election
- Gubernatorial appointment
- Legislative appointment



\* In these states, appellate court judges are chosen through commission-based appointment, and trial court judges are chosen through commission-based appointment or in partisan or nonpartisan elections.

Source: AJS' Judicial Selection in the States, [www.judicialselection.us](http://www.judicialselection.us)

State constitutions and statutes prescribe judges' terms of office and the method for determining whether they will remain on the bench at the completion of their terms.

In most commission-based appointment systems, judges run unopposed in periodic retention elections, where voters are asked whether the judge should remain on the bench. In most states with contested elections, judges regularly stand for election where they may face a challenger. In some states, judges are reappointed for additional terms, and in a few states, judges have lifetime tenure.

**Retention of Judges**

Reelection	20 States
Combined*	11 States
Reappointment	9 States
Retention election	8 States
Lifetime tenure	3 States

\* In these states, appellate court judges stand in retention elections, and trial court judges stand in retention elections or for reelection.

Source: AJS' Judicial Selection in the States, [www.judicialselection.us](http://www.judicialselection.us)



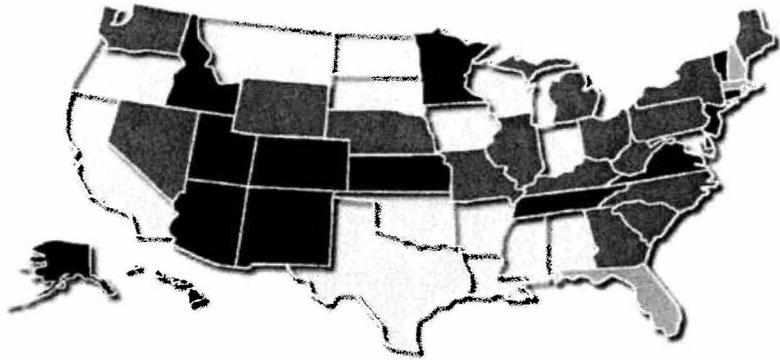
In recent years, states have adopted a variety of reforms to improve their judicial selection and retention systems, including public financing of judicial campaigns, voter guides for judicial elections, and commission-based appointment systems.

To maintain the highest quality judges, a number of states have established judicial performance evaluation (JPE) programs, where those who have interacted professionally with a judge—attorneys, jurors, court staff, other judges—are asked to assess the judge’s legal ability, integrity, communication skills, judicial temperament, and administrative capacity. Evaluation results are provided to the judge to promote self-improvement, and in some states, they are also provided to those who decide whether the judge should remain in office.

A survey of voters in four states with JPE found that publication of evaluation results added to voters' confidence in the quality of judicial candidates. Voters with access to JPE results were also more likely to vote in judicial retention elections.

Source: Kevin M. Esterling and Kathleen M. Sampson, *Judicial Retention Evaluation Programs in Four States* (American Judicature Society, 1998).

## Judicial Performance Evaluation Programs



- Evaluation officially authorized and results given to judge and decisionmakers\*
- Evaluation officially authorized and results given to judge
- Evaluation conducted by bar association, civic group, or newspaper\*\*

\*In some states, only some judges are evaluated.

\*\*A pilot program is forthcoming in North Carolina.

Source: Institute for the Advancement of the American Legal System

JPE programs have the potential to increase public confidence in the judiciary.

In the end, all Americans want state court judges who are capable, qualified, fair, and impartial, and who will act to ensure equal justice for all citizens. While no method of judicial selection, retention, or evaluation is perfect, a candid and regular examination of the methods used on a state-by-state basis will help to ensure that these goals are met.

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# Judicial Merit Selection: Current Status



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**Table 1: Characteristics of merit selection plans: Scope of the plans**

State/Jurisdiction	Year established	Level of court	Legal basis of plan	Type of vacancy	Number of commissions	Number of commissioners
<b>Alabama</b>						
Baldwin County	1999	Circuit Court District Court	CA	Interim	1	5: 1L; 3N; 1J
Jefferson County <sup>1</sup>	1950	Circuit Court	CA	Interim	1	5: 2L; 2N; 1J
Madison County	1974, revised 1996	Circuit Court District Court	CA	Interim	1	9: 2L; 6N; 1J
Mobile County	1982	Circuit Court District Court	CA	Interim	1	5: 2L; 2N; 1J
Talladega County	1996	Circuit Court District Court	CA	Interim	1	5: 1L; 3N; 1J
Tuscaloosa County	1990, revised 2002	Circuit Court District Court	CA	Interim	1	9: 5L; 3NL; 1J
<b>Alaska</b>						
	1959	Supreme Court	C	Initial and Interim	1	7: 3L; 3N; 1J
	1959	Superior Court	C	Initial and Interim		
	1980, amended 1985	Court of Appeals	S	Initial and Interim		
	1959	District Courts and Magistrates	S	Initial and Interim		
<b>Arizona</b>						
	1974, amended 1992	Supreme Court Court of Appeals	C	Initial and Interim	1	16: 5L, 10NL, 1J
		Maricopa County Superior Court	C	Initial and Interim	1	
		Pima County Superior Court	C	Initial and Interim	1	
<b>Colorado</b>						
	1967	Supreme Court Court of Appeals District Court	C	Initial and Interim	1	14: 6L, 7NL, 1J
		County Court Denver Juvenile Court Denver Probate Court	C	Initial and Interim	22	8: 1J; at least 4NL; no more than 3L <sup>2</sup>
			S	Initial and Interim		
<b>Connecticut</b>						
	1986	Supreme Court Appellate Court Superior Court	C	Initial and Interim	1	12: 6L, 6NL, 0J
<b>Delaware</b>						
	1977; revised 1978, 1985, 2001	All Courts, including Magistrates	EO	Initial and Interim	1	9: 5L, 4NL, 0J
<b>D.C.</b>						
	1973, amended 1977, 1984, 1986, 1996	Court of Appeals Superior Court	HR	Initial and Interim	1	7: 2NL, 2L, 2E, 1J
<b>Florida</b>						
	1972; amended 1976, 1984, 1996, 1998	Supreme Court District Court of Appeal Circuit Court County Court	C C C C	Initial and Interim Initial and Interim Interim	1 5 20	9: 6L, 3E, 0J
<b>Georgia</b>						
	1972 to present	Supreme Court Court of Appeals Superior Court State Court	EO	Interim	1	18

# Table 1: Characteristics of merit selection plans: Scope of the plans

State/Jurisdiction	Year established	Level of court	Legal basis of plan	Type of vacancy	Number of commissions	Number of commissioners
<b>Hawaii</b>	1959, amended 1978, 1994	Supreme Court Intermediate Court of Appeals Circuit Court District Court <sup>3</sup>	C	Initial, Interim, and Retention	1	9: 4L, 5NL, 0J
<b>Idaho</b>	1967; amended 1985, 1990	Supreme Court Court of Appeals District Court	S	Interim Interim Interim	1	7:2L, 3NL, 2J
<b>Indiana</b>	1960, amended 1970	Supreme Court Court of Appeals	C	Initial and Interim	1	7: 1J, 3L, 3NL
	1985	Tax Court	S	Initial and Interim		
Allen County	1983	Superior Court	S	Interim	1	7: 3L, 3NL, 1J
Lake County	1973	Superior Court	S	Initial and Interim	1	9: 4L, 4NL, 1J <sup>4</sup>
St. Joseph County	1973	Superior Court	S	Initial and Interim	1	7: 3L, 3NL, 1J
<b>Iowa</b>	1962, 1963; amended 1976, 1983	Supreme Court	C	Initial and Interim	1	15: 7L, 7NL, 1J <sup>5</sup>
	1962, 1963; amended 1976, 1983	Court of Appeals	S	Initial and Interim		
	1962, 1963; amended 1976, 1983	District Court	C	Initial and Interim	14	11: 5L, 5NL, 1J <sup>5</sup>
	1983, amended 1986	District Associate Judges <sup>5</sup>	S	Initial and Interim	99	6: 2L, 3NL, 1J
	1983; amended 1989, 1990, 1998	Magistrate Judges <sup>6</sup>	S	Initial and Interim		
<b>Kansas</b>	1972	Supreme Court	C	Initial and Interim	1	9: 5L, 4NL, 0J
	1975	Court of Appeals	S	Initial and Interim		
	1972	District Court (optional)	C	Initial and Interim	17	# of L's / NL's varies according to judicial district; <sup>7</sup> 1J
<b>Kentucky</b>	1976	Supreme Court Court of Appeals Circuit Court District Court	C  C	Interim  Interim	1  56	7: 2L, 4NL, 1J
<b>Maryland</b>	1970, revised 1974, 1979, 1982, 1987, 1988, 1991, 1995, 1999, 2003, 2007	Court of Appeals Court of Special Appeals District Court Circuit Court	EO  EO	Initial and Interim  Initial and Interim	1  16	17  9
<b>Massachusetts</b>	1970 to present	Appeals Court Trial Court	EO	Initial and Interim	1	21
<b>Minnesota</b>	1983, revised 1990, 1992	District Court Workers' Compensation Court of Appeals	S	Interim	1	13: up to 8L, at least 5NL, 0J <sup>8</sup>

# Table 1: Characteristics of merit selection plans: Scope of the plans

State/Jurisdiction	Year established	Level of court	Legal basis of plan	Type of vacancy	Number of commissions	Number of commissioners
<b>Missouri</b>	1940, revised 1976	Supreme Court	C	Initial and Interim	1	7: 3L, 3NL, 1J
City of St. Louis	1940, revised 1976	Court of Appeals Circuit Judge	C	Initial and Interim	1	5: 2L, 2NL, 1J
Jackson County	1940, revised 1976	Associate Circuit Judge Circuit Judge	C	Initial and Interim	1	
St. Louis County	1976	Associate Circuit Judge Circuit Judge	C	Initial and Interim	1	
Clay & Platte Counties	1976	Associate Circuit Judge Circuit Judge Associate Circuit Judge	C	Initial and Interim	2	
<b>Montana</b>	1973, amended 1977, 1979, 1987, 1991, 1992	Supreme Court District Court	C	Interim	1	7: 2L, 4NL, 1J
	1991	Worker's Compensation Judge	S	Initial and Interim		
	1987	Chief Water Judge	S	Initial and Interim		
<b>Nebraska</b>	1962, amended 1972	Supreme Court Court of Appeals District Court County Court Juvenile Court Worker's Compensation Court	C S C S S S	Initial and Interim Initial and Interim Initial and Interim Initial and Interim Initial and Interim Initial and Interim	7 6 12 4 <sup>9</sup> 3 1	9: 4L, 4NL, 1J
<b>Nevada</b>	1976	Supreme Court District Court	C	Interim	1 1 <sup>10</sup>	7:3L, 3NL, 1J 9:4L, 4NL, 1J
<b>New Hampshire</b>	2000, 2005	Supreme Court Superior Court District Court Probate Court	EO	Initial and Interim	1	11: 6L, 5NL
<b>New Mexico</b>	1988	Supreme Court Court of Appeals	C	Initial and Interim	1	14: 8L, 3NL, 3J <sup>11</sup>
	1988	District Court Metropolitan Court (Bernalillo County)	C C	Initial and Interim Initial and Interim	13 1	14: 8L, 3NL, 3J <sup>11</sup> 14: 8L, 3NL, 3J <sup>11</sup>
<b>New York</b>	1977	Court of Appeals	C	Initial and Interim	1	12: 4L, 4NL, 4E, 0J
	1975 to present	Appellate Div. of the Supreme Court Supreme Court Court of Claims County Court Surrogate's Court	EO EO EO EO	Initial and Interim Interim Initial and Interim Interim	4 1 4	13 13 14
New York City	1978 to present	Family Court Criminal Court Family Court Civil Court	EO	Initial and Interim Interim	1	19
<b>North Dakota</b>	1976; amended 1998	Supreme Court District Court	C	Interim	1 1	6: 3L/J, 3NL 9: 3L/J, 3NL, 3E <sup>12</sup>
<b>Oklahoma</b>	1967	Supreme Court Court of Criminal Appeals	C	Initial and Interim	1	13: 6L, 7NL, 0J
	1987, amended 1996	Court of Civil Appeals	S	Initial and Interim		
	1980, amended 2001	District Court	S	Interim		
	1977	Workers' Compensation Court	S	Initial and Interim		

# Table 1: Characteristics of merit selection plans: Scope of the plans

State/Jurisdiction	Year established	Level of court	Legal basis of plan	Type of vacancy	Number of commissions	Number of commissioners
<i>Rhode Island</i>	1994	Supreme Court Superior Court Family Court District Court Worker's Compensation Court Administrative Adjudication Court	C	Initial and Interim	1	9: 4L, 4NL, 1E 0J
<i>South Dakota</i>	1980	Supreme Court Circuit Court	C	Initial and Interim Interim	1	7: 3L, 2NL, 2J
<i>Tennessee</i>	1971; amended 1974, 1986, 1994, 1999, 2001	Supreme Court Court of Criminal Appeals Court of Appeals Trial Courts	S	Initial and Interim	1	15: 12L, 3NL, 0J
	1994		S	Interim		
<i>Utah</i>	1967, amended 1985, 1992, 1994	Supreme Court Court of Appeals District Court Juvenile Court	C C	Initial and Interim Initial and Interim	1 8	7: 2L, 3NL, 2E 7: 2L, 3NL, 2E
<i>Vermont</i>	1967; amended 1969, 1971, 1975, 1979, 1985	Supreme Court Superior Court District Court	C	Initial and Interim	1	11: 3L, 6NL, 2E
<i>Wyoming</i>	1973	Supreme Court District Court Circuit Court	C	Initial and Interim	1	7: 3L, 3NL, 1J <sup>3</sup>

C = Constitutional  
S = Statutory  
EO = Executive Order  
HR = Home Rule  
L = Lawyer  
NL = Non-lawyer  
E = Either Lawyer or Non-lawyer  
J = Judge

- Alabama (Jefferson County).** The Jefferson County Commission nominates candidates for vacancies in the Birmingham Division only.
- Colorado.** In judicial districts with populations greater than 35,000, there must be three lawyer and four non-lawyer members. In judicial districts with populations of 35,000 or less, there must be at least four non-lawyer members; a majority vote of the governor, the attorney general, and the chief justice determines how many of the remaining three members must be lawyers.
- Hawaii.** The chief justice makes appointments to the district courts.
- Indiana (Lake County).** Two lawyer and two non-lawyer members must be men; two lawyer and two non-lawyer members must be women; at least one lawyer and one non-lawyer member must be a minority.
- Iowa.** The mandatory ratio of lawyers to non-lawyers is not specified; traditionally, the governor appoints only non-lawyers and the bar elects only lawyers. No more than a simple majority of members appointed by the governor may be of the same gender, and the bar must alternate between electing male and female members.
- Iowa.** District judges appoint district associate judges from lists of nominees recommended by the county magistrate appointing commission. The county magistrate appointing commission appoints magistrates.
- Kansas.** The number of commission members varies with the number of counties in each judicial district; however, there must be an equal number of lawyers and non-lawyers on each commission.
- Minnesota.** There are nine commission members who serve "at-large" to fill any district court or workers' compensation court of appeals vacancies. In addition, there are four commission members—two lawyers and two non-lawyers—appointed from the district in which the vacancy exists.
- Nebraska.** The district court judicial nominating commissions also nominate county court judges, except in Districts 1, 3, 4, and 10, in which there are separate county and district judicial nominating commissions.
- Nevada.** Nominations for district court vacancies are made by temporary commissions that are assembled as each vacancy occurs and exist only until nominations have been submitted to the governor. These temporary commissions consist of members of the permanent commission and one lawyer and one non-lawyer resident of the judicial district in which the vacancy occurs.

## Table 1: Characteristics of merit selection plans: Scope of the plans

11. **New Mexico.** The president of the state bar and the judges on the commission are authorized to make the minimum number of additional appointments of members of the state bar as is necessary for equal representation on the commission of the two largest political parties.

12. **North Dakota.** When a vacancy occurs on the district court, the governor, chief judge, and president of the state bar each appoint an additional temporary member, who may or may not be a lawyer, from the judicial district in which the vacancy occurs; these members serve until the vacancy is filled.

13. **Wyoming.** When a vacancy occurs on a district or circuit court, and that district or county is not represented on the commission, one lawyer and one non-lawyer from that district or county are appointed as temporary, nonvoting advisors to the commission.

## Table 2: Composition of nominating commission

State/Court	Term of service	Chair appointed/elected by	Lawyers appointed/elected by	Non-lawyers appointed/elected by	Judges appointed/elected by
<b>Alabama</b>					
Baldwin County	6 years	Judge serves ex officio	Baldwin County Bar Association	Baldwin County Commission/ Baldwin County Mayor's Association/ Baldwin County legislative delegation	Presiding circuit judge serves
Jefferson County	6 years	No regular chair	Birmingham Bar Association	Jefferson County legislative delegation	Birmingham circuit court judges
Madison County	6 years	Judge serves ex officio	Madison County Bar Association	Madison County legislative delegation	Madison County circuit court judges
Mobile County	6 years	N/I	Mobile County Bar Association	Mobile County legislative delegation	Mobile County circuit court judges
Talladega County	4 years	Judge serves ex officio	Not appointed or elected	Talladega County legislative delegation	Presiding circuit judge serves ex officio
Tuscaloosa County	6 years	Commission members	Tuscaloosa County Bar Association	Tuscaloosa County legislative delegation	Presiding circuit judge serves ex officio
<b>Alaska</b>					
Supreme Court	6 years	Chief justice serves ex officio	State bar association	Governor/ State legislature	Chief justice serves ex officio
<b>Arizona</b>					
Supreme Court and Court of Appeals	4 years	Chief justice serves ex officio	State bar association/ Governor/ Senate	Governor/ Senate	Chief justice serves ex officio
Maricopa County Superior Court and Pima County Superior Court	4 years	Chief justice serves ex officio	State bar association/ Governor/ Senate	Nominating commission/ Governor/Senate <sup>1</sup>	Chief justice serves ex officio
<b>Colorado</b>					
Supreme Court and Court of Appeals	6 years	Chief justice serves ex officio	Governor/ Attorney general/ Chief justice	Governor	Chief justice serves ex officio
District Court, County Court, Juvenile Court of Denver and Probate Court of Denver County	6 years	Supreme court justice serves ex officio	Governor/ Attorney general/ Chief justice	Governor	Supreme court justice serves ex officio
<b>Connecticut</b>					
Supreme Court, Appellate Court and Superior Court	3 years	Commission members <sup>2</sup>	Governor	Legislative leaders	N/A
<b>Delaware</b>					
All Courts, including Magistrates	3 years	Governor	Governor/ State bar president	Governor	N/A
<b>D. C.</b>					
All Courts	6 years <sup>3</sup>	Commission members	President/ Mayor/ Board of governors of DC bar	President/ Mayor/ DC city council	Chief judge of the US District Court for DC
<b>Florida</b>					
Supreme Court, District Court of Appeal, Circuit Court, County Court	4 years	Commission members	Board of governors of Florida bar/ Governor <sup>4</sup>	Governor	N/A

## Table 2: Composition of nominating commission

State/Court	Term of service	Chair appointed/elected by	Lawyers appointed/elected by	Non-lawyers appointed/elected by	Judges appointed/elected by
<b>Georgia</b>					
Supreme Court, Court of Appeals, Superior Court, and State Court	At Governor's discretion	Governor	Governor	Governor	N/A
<b>Hawaii</b>					
Supreme Court, Intermediate Court of Appeals, Circuit Court and District Court	6 years	Commission members	State bar association/ Governor/ Senate president/ Speaker of the house/ Chief justice	Governor/ Chief justice/ Senate president/ Speaker of the house	N/A
<b>Idaho</b>					
Supreme Court, Court of Appeals and District Court	6 years	Chief justice serves	Board of commissioners of the state bar with senate consent	Governor with senate consent	State bar with senate consent/ Chief justice serves
<b>Indiana</b>					
Supreme Court, Court of Appeals and Tax Court	3 years	Chief justice serves ex officio	State bar members in each district	Governor	Chief justice serves ex officio
Allen County Superior Court	4 years	Chief justice serves ex officio (or designee on the court of appeals or supreme court)	Lawyers residing in Allen County	Governor	Chief justice serves ex officio (or designee on the court of appeals or supreme court)
Lake County Superior Court and County Court	4 years	Chief justice serves ex officio (or designee on the court of appeals or supreme court)	Lawyers residing in Lake County	County board of commissioners	Chief justice serves ex officio (or designee on the court of appeals or supreme court)
St Joseph County Superior Court	4 years	Chief justice serves ex officio	Lawyers residing or practicing law in St. Joseph County	Selection committee <sup>5</sup>	Chief justice serves ex officio
<b>Iowa</b>					
Supreme Court and Court of Appeals	6 years	Senior supreme court justice serves ex officio	Resident members of the bar from each congressional district	Governor	Senior supreme court justice serves ex officio
District Court	6 years	Senior district court judge serves ex officio	Resident members of the bar of each judicial election district	Governor	Senior district court judge serves ex officio
District Associate Judges and Magistrate Judges	6 years	N/I	Attorneys in the county	County board of supervisors	Chief judge of the judicial district serves ex officio
<b>Kansas</b>					
Supreme Court and Court of Appeals	4 years	Lawyers residing in and licensed in Kansas	Lawyers of each congressional district	Governor	N/A
District Court	4 years	Supreme court justice serves ex officio	Lawyers of the judicial district	Board of county commissioners	Supreme court justice serves ex officio
<b>Kentucky</b>					
Supreme Court and Court of Appeals	4 years	Chief justice serves ex officio	State bar	Governor	Chief justice serves ex officio
Circuit Court and District Court	4 years	Chief justice serves ex officio	Local members of the state bar	Governor	Chief justice serves ex officio

## Table 2: Composition of nominating commission

State/Court	Term of service	Chair appointed/elected by	Lawyers appointed/elected by	Non-lawyers appointed/elected by	Judges appointed/elected by
<b>Maryland</b>					
Court of Appeals and Court of Special Appeals	Coextensive with governor	Governor	State bar association/ Governor	Governor	N/A
District Court and Circuit Court	Coextensive with governor	Governor	State bar association/ Governor	Governor	N/A
<b>Massachusetts</b>					
Appeals Court and Trial Court	At governor's discretion	Governor	Governor	Governor	N/A
<b>Minnesota</b>					
District Court and Workers' Compensation Court of Appeals	At governor's discretion/ 4 years	Governor	Governor/ Supreme court justices	Governor/ Supreme court justices	Governor/ Supreme court justices
<b>Missouri</b>					
Supreme Court and Court of Appeals	6 years	Commission members	Lawyers residing in each court of appeals district	Governor	Supreme court justice serves ex officio
Circuit Courts	6 years	Commission members	Lawyers residing in the judicial circuit	Governor	Chief judge of court of appeals serves ex officio
<b>Montana</b>					
Supreme Court, District Court, Worker's Compensation Judge and Chief Water Judge	4 years	Commission members	Supreme court	Governor	District court judges
<b>Nebraska</b>					
Supreme Court, Court of Appeals, District Court, County Court, Juvenile Court, Worker's Compensation Court	4 years	Supreme court justice serves ex officio	Lawyers residing in judicial election districts	Governor	Supreme court justice serves ex officio
<b>Nevada</b>					
Supreme Court	4 years	Commission members	State bar	Governor	Chief justice serves ex officio
District Court	Until nominations given to governor	Commission members	State bar	Governor	Chief justice serves ex officio
<b>New Hampshire</b>					
Supreme Court, Superior Court, District Court, Probate Court	Up to 3 years	Governor	Governor	Governor	N/A

## Table 2: Composition of nominating commission

State/Court	Term of service	Chair appointed/elected by	Lawyers appointed/elected by	Non-lawyers appointed/elected by	Judges appointed/elected by
<b>New Mexico</b>					
Supreme Court & Court of Appeals	N/I	Dean of the University of New Mexico School of Law serves ex officio	Judges on committee and state bar president/ Governor/ Speaker of the house/ Senate president	Governor/ Speaker of the house/ Senate president	Chief justice of the supreme court/ Chief judge of the court of appeals
District Court	N/I	Dean of the University of New Mexico School of Law serves ex officio	Judges on committee and state bar president/ Governor/ Speaker of the house/ Senate president	Governor/ Speaker of the house/ Senate president	Chief justice of the supreme court/ Chief judge of the court of appeals/ Chief judge of the district court
Metropolitan Court	N/I	Dean of the University of New Mexico School of Law serves ex officio	Judges on committee and state bar president/ Governor/ Speaker of the house/ Senate president	Governor/ Speaker of the house/ Senate president	Chief justice of the supreme court/ Chief judge of the court of appeals/Chief judge of the metropolitan court
<b>New York</b>					
Court of Appeals	4 years	Commission members	Governor/ Chief judge of court of appeals/ Legislative leaders	Governor/ Chief judge of court of appeals/ Legislative leaders	N/A
Appellate Division of the Supreme Court, Supreme Court	3 years	Governor	Governor/ Judicial and legislative leaders/ Attorney general/ State bar association	Governor/ Judicial and legislative leaders/ Attorney general/ State bar association	N/A
Court of Claims	3 years	Governor	Governor/ Chairs of departmental committees serve ex officio <sup>5</sup>	Governor/ Chairs of departmental committees serve ex officio <sup>6</sup>	N/A
County Court, Surrogate's Court, and Family Court (outside of NYC)	3 years	Chair of departmental screening committee serves ex officio <sup>6</sup>	County executive	County executive	N/A
New York City Criminal Court, Family Court, and Civil Court	2 years	Mayor	Mayor/ Presiding judges/ Law school deans	Mayor/ Presiding judges/ Law school deans	N/A
<b>North Dakota</b>					
Supreme Court and District Court	3 years	Governor	Governor/ Chief judge/ State bar president	Governor/ Chief judge/ State bar president	Governor/ Chief judge/ State bar president
<b>Oklahoma</b>					
Supreme Court, Court of Criminal Appeals, Court of Civil Appeals, District Court, Workers' Compensation Court	6 years	Commission members	Lawyers from each congressional district	Governor/ Commission members	N/A
<b>Rhode Island</b>					
Supreme Court, Superior Court, Family Court, District Court, Worker's Compensation Court, Administrative Adjudication Court	4 years	Governor	Governor/ Legislative leadership <sup>7</sup>	Governor/ Legislative leadership <sup>7</sup>	N/A

## Table 2: Composition of nominating commission

State/Court	Term of service	Chair appointed/elected by	Lawyers appointed/elected by	Non-lawyers appointed/elected by	Judges appointed/elected by
<b>South Dakota</b> Supreme Court and Circuit Court	4 years	Commission members	State bar president	Governor	Judicial conference
<b>Tennessee</b> Supreme Court, Court of Criminal Appeals, Court of Appeals, Trial Courts	2-6 years	Commission members	Speaker of the senate/ Speaker of the house <sup>a</sup>	Speaker of the senate/ Speaker of the house	N/A
<b>Utah</b> Supreme Court and Court of Appeals District Court and Juvenile Court	4 years 4 years	Governor Governor	Governor Governor	Governor Governor	Supreme court chief justice serves ex officio Supreme court chief justice serves ex officio
<b>Vermont</b> Supreme Court, Superior Court and District Court	2 years	Commission members	Vermont lawyers/ Legislature	Governor/ Legislature	N/A
<b>Wyoming</b> Supreme Court, District Court and Circuit Court	4 years	Chief justice serves ex-officio	State bar	Governor	N/A

1. **Arizona.** Maricopa and Pima Counties are each divided into five supervisory districts. Each district has a seven member nominating committee for the purpose of recommending prospective non-lawyer members of the superior court nominating commission to the senate.

2. **Connecticut.** The commission members elect the chair from among the six lawyer members appointed by the governor.

3. **D.C.** All members serve six year terms, except the member appointed by the president, who serves a five year term.

4. **Florida.** The board of governors of the Florida bar submits three recommended nominees for each position. The governor may reject all of the nominees and request a new list of nominees.

5. **Indiana (St. Joseph County).** The non-lawyer members are appointed by a selection committee consisting of the judges of the St. Joseph circuit court, the president of the board of St. Joseph County commissioners, and the mayors in each of the two most populous cities in St. Joseph County.

6. **New York.** The departmental screening committees identify nominees for the supreme court.

7. **Rhode Island.** The governor appoints three lawyers and one non-lawyer of his or her choice. The governor also appoints five additional commission members, one from each of the following lists: a list of at least three lawyers submitted by the speaker of the house; a list of at least three lawyers and/or non-lawyers submitted by the senate majority leader; a list of four non-lawyers submitted jointly by the speaker and the senate majority leader; a list of at least three non-lawyers submitted by the minority leader of the house; and a list of at least three non-lawyers submitted by the minority leader of the senate.

8. **Tennessee.** Lawyers are appointed from lists submitted by the Tennessee Bar Association, the Tennessee Defense Lawyers Association, the Tennessee Trial Lawyers Association, the Tennessee District Attorneys General Conference, and the Tennessee Association of Criminal Defense Lawyers.

### Table 3: Rules governing submission of list of nominees

State/Court	Days allowed to submit list	Number of names submitted	Order names are submitted	Add'l info. sent to appointing authority	Governor bound by recommendation	Legislative confirmation required	Nominees names made public
<b>Alabama</b>							
Baldwin County	30	3	Alpha	No	Yes	No	Yes
Jefferson County	N/I	3	Alpha	No	Yes	No	Yes
Madison County	N/I	3	N/I	N/I	Yes	No	Yes
Mobile County	N/I	3	N/I	N/I	Yes	No	N/I
Talladega County	N/I	3	N/I	N/I	Yes	No	N/I
Tuscaloosa County	45	3	N/I	No	Yes <sup>1</sup>	No	Yes
<b>Alaska</b>	90 <sup>2</sup>	2 or more	Alpha	Applicant questionnaires, Voting record, Bar survey, Letters of recommendation	Yes	No	Yes
<b>Arizona</b>	60	3 or more	Alpha	Commission file	Yes	No	Yes
<b>Colorado</b>							
Appellate Courts	30	3	Alpha	Applicant questionnaire	Yes	No	Yes
Trial Courts	30	2-3	Varies by judicial district <sup>3</sup>	Varies by judicial district <sup>3</sup>	Yes	No	Yes <sup>4</sup>
<b>Connecticut</b>	N/I	N/I	N/I	N/I	Yes	Yes <sup>5</sup>	N/I
<b>Delaware</b>	60	3	Alpha	None	Yes <sup>6</sup>	Yes	No
<b>D.C.</b>	60	3	N/I	N/I	Yes (President)	Yes	Yes
<b>Florida</b>							
Supreme Court	30	3-6	Alpha	Investigative file	Yes	No	Yes
District Court of Appeal	30	3	Alpha	Investigative file	Yes	No	Yes
Trial Courts	30	3 or more	Alpha	Investigative file	Yes	No	Yes
<b>Georgia</b>	N/I	5 at most	N/I	N/I	No	No	N/I
<b>Hawaii</b>	N/I	4-6	Alpha	Applicant questionnaire	Yes	Yes	No
<b>Idaho</b>	N/I	2-4	N/I	N/I	Yes	No	Yes
<b>Indiana</b>							
Appellate Courts and Tax Court	70	3	N/I	Nominee evaluations	Yes	No	Yes
Allen County	60	3	N/I	Nominee evaluations	Yes	No	Yes
Lake County	60	3	N/I	Nominee evaluations	Yes	No	Yes
St Joseph County	60	5	N/I	Nominee evaluations	Yes	No	Yes
<b>Iowa</b>							
Supreme Court	60	3	Alpha	Applicant questionnaire	Yes	No	Yes
Court of Appeals	60	3	Alpha	Applicant questionnaire	Yes	No	Yes
District Court	60	2	Alpha	N/I	Yes	No	Yes <sup>7</sup>
District Associate Judges	15-30	3	N/I	N/I	Yes <sup>8</sup>	No	N/I
Magistrate Judges	15-30	1	N/I	N/I	N/A <sup>8</sup>	No	N/I

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State/Court	Days allowed to submit list	Number of names submitted	Order names are submitted	Add'l info. sent to appointing authority	Governor bound by recommendation	Legislative confirmation required	Nominees names made public
<b>Kansas</b>							
Appellate Courts	60	3	N/I	N/I	Yes	No	N/I
District Court	30	2-3	N/I	N/I	Yes	No	N/I
<b>Kentucky</b>	N/I	3	Alpha	N/I	Yes	No	Yes
<b>Maryland</b>							
Appellate Courts	85	at least 3	Alpha	N/I	Yes <sup>9</sup>	No	Yes
Trial Courts	85	at least 3	Alpha	N/I	Yes <sup>9</sup>	No	Yes
<b>Massachusetts</b>	N/I	3-6	Alpha	N/I	No <sup>10</sup>	No <sup>11</sup>	No
<b>Minnesota</b>	60	3-5	N/I	N/I	No	No	Yes
<b>Missouri</b>	N/I	3	N/I	N/I	Yes	No	Yes
<b>Montana</b>	90	3-5	N/I	Entire applicant file, Commission voting record and recommendations	Yes	Yes	Yes
<b>Nebraska</b>	90	3 or more	Alpha	Applicant questionnaire, Investigative file	Yes	No	Yes
<b>Nevada</b>	N/I	3	Alpha	Entire file	Yes	No	Yes
<b>New Hampshire</b>	N/I	N/I	N/I	N/I	Yes <sup>12</sup>	No <sup>13</sup>	
<b>New Mexico</b>	30	2 or more	Alpha	N/I	Yes <sup>14</sup>	No	Yes
<b>New York</b>							
Court of Appeals	120 <sup>15</sup>	3-7	N/I	Entire file, including: commission recommendations, applicant financial statements	Yes	Yes	Yes
Appellate Division of the Supreme Court and Supreme Court; Trial Courts (outside New York City)	N/I	N/I	N/I	Written evaluation, Entire file	Yes	Yes	No
New York City	90	3	N/I	Information re: qualifications	Yes (Mayor)	No	No
<b>North Dakota</b>	60	2-7	Alpha	N/I	No	No	Yes
<b>Oklahoma</b>	N/I	3	Random	Applicant questionnaire, Writing sample, Investigative file	Yes	No	Yes
<b>Rhode Island</b>	90	3-5	Alpha	Entire file	Yes	Yes	Yes

### Table 3: Rules governing submission of list of nominees

State/Court	Days allowed to submit list	Number of names submitted	Order names are submitted	Add'l info. sent to appointing authority	Governor bound by recommendation	Legislative confirmation required	Nominees names made public
<i>South Dakota</i>	N/I	2 or more	Alpha	Investigative file	Yes	No	N/I
<i>Tennessee</i>	60	3	Alpha	Investigative file, Applicant questionnaire	Yes <sup>16</sup>	No	Yes
<i>Utah</i>							
Appellate Courts	45	5-7	Alpha	Investigative file, Applicant questionnaire	Yes	Yes	Yes
Trial Courts	45	3-5	Alpha	Investigative file, Applicant questionnaire	Yes	Yes	Yes
<i>Vermont</i>	N/I	Open	Alpha	Applicant questionnaire	Yes	Yes	No
<i>Wyoming</i>	60	3	Alpha	Entire file	Yes	No	N/I

1. **Alabama (Tuscaloosa County).** If the governor does not select from the list within 60 days, the commission is required to submit a new list.
2. **Alaska.** Time may be extended by the judicial council with the concurrence of the supreme court.
3. **Colorado.** Each of Colorado's twenty-two district judicial nominating commissions has developed its own rules of procedure.
4. **Colorado.** The judicial nominating commissions of two districts do not indicate whether nominees' names are made public.
5. **Connecticut.** The governor selects a nominee from the commission's list, sends the name to the general assembly, and the general assembly makes the appointment.
6. **Delaware.** The governor may refuse to appoint from the first list and may require the commission to submit one supplementary list.
7. **Iowa.** According to Iowa's sample procedures for district judicial nominating commissions, the names of nominees are announced in a press release. However, these sample procedures have not been formally adopted by all of Iowa's 14 judicial districts.
8. **Iowa.** District judges appoint district associate judges from lists of nominees recommended by the county magistrate appointing commission. The county magistrate appointing commission appoints magistrates.
9. **Maryland.** The governor may also fill the vacancy by selecting a person from any list submitted by the appropriate commission for a vacancy on the same court, provided the previous list was submitted within two years of the current vacancy and information on the nominee is updated.
10. **Massachusetts.** The governor may decline to nominate any applicant and seek further recommendations from the commission.
11. **Massachusetts.** Appointment requires advice and consent of the governor's council.
12. **New Hampshire.** The governor may request that the commission engage in a further search for qualified applicants.
13. **New Hampshire.** The governor's nominees must be confirmed by the executive council.
14. **New Mexico.** The governor may make one request to the commission for additional names, and the commission shall comply if a majority of the commission finds that additional persons would be qualified and recommends those persons for appointment.
15. **New York.** For unexpected vacancies, the commission has 120 days to submit a list of nominees. For vacancies that occur through expiration of terms on December 31, the commission has a fixed deadline of December 1, except for terms that expire during non-election years when the deadline is October 15.
16. **Tennessee.** For appellate court vacancies, the governor may reject the first list of nominees and request a second list, but he or she must provide in writing reasons for rejecting the first list and must select a nominee from the second list.

## Table 4: Rules of confidentiality

State/Court	Identity of applicants	Records	Interviews	External communications to commissioners	Deliberations	Voting	Communications with appointing authority
<b>Alabama</b>							
Baldwin County	No	Yes	Yes	Yes	Yes	Yes	Yes
Jefferson County	No	Yes	Yes	Yes	Yes	Yes	Yes
Madison County							
Mobile County							
Tuscaloosa County	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Alaska</b>							
	No	No	Yes <sup>1</sup>	Yes	Yes	No	Yes
<b>Arizona</b>							
	No	Yes	No	Yes	No <sup>2</sup>	No	
<b>Colorado<sup>3</sup></b>							
	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Connecticut</b>							
	Yes	Yes	Yes	Yes	Yes		Yes
<b>Delaware</b>							
	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>D.C.</b>							
	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Florida</b>							
	No	No	No	No	Yes	Yes	Yes <sup>4</sup>
<b>Georgia</b>							
<b>Hawaii</b>							
	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Idaho</b>							
	No	Yes	No	Yes	Yes	Yes	Yes
<b>Indiana</b>							
Appellate Courts and Tax Court	No	No	No	No	Yes		No
Allen County	No						
Lake County	No	No	No	No	No	No	No
St Joseph County	No						No
<b>Iowa</b>							
Supreme Court and Court of Appeals	No	Yes	Yes	Yes	Yes	Yes	Yes
District Court	Yes	Yes	Yes	Yes	Yes	Yes	Yes
District Associate and Magistrate Judges							
<b>Kansas</b>							
<b>Kentucky</b>							
	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>Maryland</b>							
	No	Yes	Yes		Yes	Yes	
<b>Massachusetts</b>							
	Yes	Yes	Yes		Yes	Yes	Yes
<b>Minnesota</b>							
<b>Missouri</b>							
	Yes	Yes	Yes	Yes <sup>5</sup>	Yes	Yes	Yes
<b>Montana<sup>6</sup></b>							
	No	No	No	No	No	Yes	No
<b>Nebraska</b>							
	No	No	Yes	No	Yes		

Yes = Data/procedure confidential

No = Data/procedure not confidential

no entry = Not indicated in commission rules

## Table 4: Rules of confidentiality

State/Court	Identity of applicants	Records	Interviews	External communications to commissioners	Deliberations	Voting	Communications with appointing authority
<i>Nevada</i>	No	No <sup>7</sup>	No <sup>8</sup>	Yes	No <sup>9</sup>	No <sup>9</sup>	No
<i>New Hampshire</i>	Yes	Yes			Yes		
<i>New Mexico</i>	No		No	No	Yes	No	
<b><i>New York</i></b>							
Court of Appeals	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Appellate Division of the Supreme Court and Supreme Court;	Yes	Yes	Yes	Yes	Yes	Yes	Yes <sup>9</sup>
Trial Courts (outside New York City)							
New York City	Yes	Yes	Yes	Yes	Yes	Yes	No
<i>North Dakota</i>	No	No			No	No	
<i>Oklahoma</i>	No	Yes	Yes	Yes	Yes	Yes	No
<i>Rhode Island</i>	No		No	No	Yes	No	
<i>South Dakota</i>	No	Yes	Yes	Yes	Yes	Yes	Yes
<i>Tennessee</i>	No	No	Yes	No <sup>10</sup>	Yes	Yes	Yes
<i>Utah</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<i>Vermont</i>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b><i>Wyoming</i></b>							

Yes = Data/procedure confidential

No = Data/procedure not confidential

no entry = Not indicated in commission rules

1. **Alaska.** Applicant interviews are conducted in executive session unless the applicant requests an interview in public session.
2. **Arizona.** Deliberations may be held in executive session upon a two-thirds vote of commission members.
3. **Colorado.** The rules for two of Colorado's district judicial nominating commissions do not contain complete information on rules of confidentiality.
4. **Florida.** Communications between the governor and the judicial nominating commission for the district court of appeal are not confidential.
5. **Missouri.** All communications between a commission member and a non-commission member must be summarized in writing and provided to all other commission members.
6. **Montana.** All meetings, proceedings of the commission, and documents shall be open to the public except when a majority of the commission votes that the demand of individual privacy exceeds the merits of public disclosure.
7. **Nevada.** Information that is ordinarily sensitive and confidential and that proves to be of little or no relevance to a candidate's qualifications is confidential.
8. **Nevada.** The commission may meet in executive session with the approval of a majority of members if it is deemed necessary or appropriate because of the sensitive nature of the matters or information to be discussed.
9. **New York.** The report relating to the governor's appointee is made publicly available upon announcement of the appointment.
10. **Tennessee.** After one public meeting where any member of the public may suggest possible nominees or express approval or disapproval of proposed nominees, the commission may hold such additional public or private meetings as it deems necessary.

## Table 5: Nominating commission procedures

State	Disqualification provision	Ethics provisions	Oath of office	Political activity prohibition	External recruitment provision	Provision for diversity	Rule against discrimination	Judicial performance evaluation available to commission
<i>Alabama</i>				X <sup>1</sup>	X <sup>2</sup>			
<i>Alaska</i>	X		X		X			X
<i>Arizona</i>	X				X	Applicants Commissioners		X
<i>Colorado</i>			X <sup>3</sup>		X <sup>4</sup>		X	
<i>Connecticut</i>				X				X
<i>Delaware</i>	X				X		X	
<i>D.C.</i>								X
<i>Florida</i>	X	X			X			
<i>Georgia</i>		X				Commissioners		
<i>Hawaii</i>	X	X		X	X		X	X
<i>Idaho</i>			X					
<i>Indiana</i>	X <sup>5</sup>			X	X <sup>5</sup>	Applicants Commissioners <sup>5</sup>		
<i>Iowa</i>	X <sup>7</sup>				X <sup>8</sup>	Applicants <sup>8</sup>	X <sup>9</sup>	
<i>Kansas</i>			X	X <sup>10</sup>	X			
<i>Kentucky</i>				X	X			
<i>Maryland</i>	X			X	X	Applicants		
<i>Massachusetts</i>	X	X		X		Commissioners		
<i>Minnesota</i>					X	Applicants		
<i>Missouri</i>	X		X	X	X	Applicants		
<i>Montana</i>								
<i>Nebraska</i>	X		X		X		X	
<i>Nevada</i>	X				X		X	
<i>New Hampshire</i>	X							
<i>New Mexico</i>	X		X		X			
<i>New York</i> New York City				X	X X		X <sup>11</sup>	
<i>North Dakota</i>					X			
<i>Oklahoma</i>	X	X	X	X	X		X	

## Table 5: Nominating commission procedures

State	Disqualification provision	Ethics provisions	Oath of office	Political activity prohibition	External recruitment provision	Provision for diversity	Rule against discrimination	Judicial performance evaluation available to commission
<i>Rhode Island</i>	X	X	X		X	Applicants Commissioners		
<i>South Dakota</i>	X	X			X			
<i>Tennessee</i>	X	X	X	X	X	Commissioners		
<i>Utah</i>	X				X	Applicants	X	X
<i>Vermont</i>	X				X		X	
<i>Wyoming</i>				X	X			

1. **Alabama.** Tuscaloosa County prohibits commission members from holding elective offices or official positions within political parties.

2. **Alabama.** Unlike other jurisdictions with external recruitment provisions that allow or encourage recruitment, Baldwin, Jefferson, and Tuscaloosa Counties forbid commission members from soliciting applicants.

3. **Colorado.** The rules of the nominating commission for the 11th judicial district require commission members to take an oath of secrecy.

4. **Colorado.** There is no external recruitment provision for the supreme court nominating commission, but a majority of the district nominating commissions have such provisions.

5. **Indiana.** The Indiana judicial nominating commission has a disqualification provision and an external recruitment provision.

6. **Indiana.** The nominating commission for Lake County has diversity provisions regarding both commission members and applicants.

7. **Iowa.** A disqualification provision is included in Iowa's sample procedures for district judicial nominating commissions. Although many judicial districts have not yet formally adopted these procedures, most districts utilize them as general guidelines.

8. **Iowa.** The internal rules of the state judicial nominating commission include an external recruitment provision and a diversity provision, as do the sample procedures for district judicial nominating commissions.

9. **Iowa.** The magistrate appointing commission handbook contains rules against discrimination in the nomination of candidates as district associate and magistrate judges.

10. **Kansas.** The Kansas constitution contains a prohibition on political activity for members of the supreme court nominating commission.

11. **New York.** Rules for the appellate division of the supreme court and the trial courts include a rule against discrimination.

# **Judicial Selection in the States**

## ***Appellate and General Jurisdiction Courts***



© American Judicature Society, 1986-2008  
Updated 2008

ISBN 1-928919-07-3

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# Judicial Selection in the States

## *Appellate and General Jurisdiction Courts*

### “Summary of Initial Selection Methods”

Merit Selection <sup>1</sup>	Gubernatorial (G) or Legislative (L) Appointment	Partisan Election	Non-Partisan Election	Combined Merit Selection and Other Methods <sup>2</sup>
Alaska	California (G) <sup>2</sup>	Alabama	Arkansas	Arizona
Colorado	Maine (G)	Illinois	Georgia	Florida
Connecticut	New Jersey (G)	Louisiana	Idaho	Indiana
Delaware	Virginia (L)	Ohio <sup>2</sup>	Kentucky	Kansas
District of Columbia	South Carolina (L) <sup>2</sup>	Pennsylvania	Michigan <sup>2</sup>	Missouri
Hawaii		Texas	Minnesota	New York
Iowa		West Virginia	Mississippi	Oklahoma
Maryland			Montana	South Dakota
Massachusetts			Nevada	Tennessee
Nebraska			North Carolina	
New Hampshire			North Dakota	
New Mexico			Oregon	
Rhode Island			Washington	
Utah			Wisconsin	
Vermont				
Wyoming				

1. The following eight states use merit plans only to fill midterm vacancies on some or all levels of court: Alabama, Georgia, Idaho, Kentucky, Minnesota, Montana, Nevada, and North Dakota.

2. See attached chart for details.



# Judicial Selection in the States

## Appellate and General Jurisdiction Courts

### “Initial Selection, Retention, and Term Length”

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection	Gubernatorial (G) or Legislative (L) Appointment	Non-Partisan Election	Partisan Election		
<b>ALABAMA</b>						
Supreme Court				X	6	Re-election (6 year term)
Court of Civil App.				X	6	Re-election (6 year term)
Court of Criminal App.				X	6	Re-election (6 year term)
Circuit Court				X	6	Re-election (6 year term)
<b>ALASKA</b>						
Supreme Court	X				3	Retention election (10 year term) <sup>1</sup>
Court of Appeals	X				3	Retention election (8 year term)
Superior Court	X				3	Retention election (6 year term)
<b>ARIZONA</b>						
Supreme Court	X				2	Retention election (6 year term)
Court of Appeals	X				2	Retention election (6 year term)
Superior Court (county pop. greater than 250,000)	X				2	Retention election (4 year term)
Superior Court (county pop. less than 250,000)			X		4	Re-election (4 year term)
<b>ARKANSAS<sup>2</sup></b>						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
<b>CALIFORNIA</b>						
Supreme Court		X(G)			12	Retention election (12 year term)
Courts of Appeal		X(G)			12	Retention election (12 year term)
Superior Court <sup>3</sup>			X		6	Nonpartisan election (6 year term) <sup>4</sup>

1. In a retention election judges run unopposed on the basis of their record.

2. In November 2000, Arkansas voters passed an amendment to the Arkansas constitution shifting judicial elections to a nonpartisan system.

3. The California constitution provides that local electors may choose gubernatorial appointments instead of nonpartisan election to select superior court judges. To date, no counties have chosen gubernatorial appointments.

4. If the election is uncontested, the incumbent's name does not appear on the ballot.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection	Gubernatorial (G) or Legislative (L) Appointment	Non-Partisan Election	Partisan Election		
<b>COLORADO</b>						
Supreme Court	X				2	Retention election (10 year term)
Court of Appeals	X				2	Retention election (8 year term)
District Court	X				2	Retention election (6 year term)
<b>CONNECTICUT</b>						
Supreme Court	X				8	Commission reviews incumbent's performance on noncompetitive basis; governor renominates and legislature confirms
Appellate Court	X				8	Same
Superior Court	X				8	Same
<b>DELAWARE<sup>5</sup></b>						
Supreme Court	X				12	See Footnote 6
Court of Chancery	X				12	See Footnote 6
Superior Court	X				12	See Footnote 6
<b>DISTRICT OF COLUMBIA</b>						
Court of Appeals	X				15	Reappointment by judicial tenure commission <sup>7</sup>
Superior Court	X				15	Reappointment by judicial tenure commission <sup>7</sup>
<b>FLORIDA</b>						
Supreme Court	X				1	Retention election (6 year term)
District Court of Appeal	X				1	Retention election (6 year term)
Circuit Court			X		6	Re-election for additional terms
<b>GEORGIA</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Superior Court			X		4	Re-election for additional terms
<b>HAWAII</b>						
Supreme Court	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)
Intermediate Court of Appeals	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)
Circuit Court and Family Court	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)

5. Merit selection established by executive order in Delaware, Maryland, Massachusetts, and New Hampshire. In all other jurisdictions merit selection established by constitutional or statutory provision.

6. Incumbent reapplies to nominating commission and competes with other applicants for nomination by the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.

7. Initial appointment is made by the President of the United States and confirmed by the Senate. Six months prior to the expiration of the term of office, the judge's performance is reviewed by the tenure commission. Those found "Well Qualified" are automatically reappointed. If a judge is found to be "Qualified" the President may nominate the judge for an additional term (subject to Senate confirmation). If the President does not wish to reappoint the judge, the District of Columbia Nomination Commission compiles a new list of candidates.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection	Gubernatorial (G) or Legislative (L) Appointment	Non-Partisan Election	Partisan Election		
<b>IDAHO</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
District Court			X		4	Re-election for additional terms
<b>ILLINOIS</b>						
Supreme Court				X	10	Retention election (10 year term)
Appellate Court				X	10	Retention election (10 year term)
Circuit Court				X	6	Retention election (6 year term)
<b>INDIANA</b>						
Supreme Court	X				2	Retention election (10 year term)
Court of Appeals	X				2	Retention election (10 year term)
Circuit Court				X	6	Re-election for additional terms
Circuit Court (Vanderburgh County)			X		6	Re-election for additional terms
Superior Court				X	6	Re-election for additional terms
Superior Court (Allen County)			X		6	Re-election for additional terms
Superior Court (Lake County)	X <sup>a</sup>				2	Retention election (6 year term)
Superior Court (St. Joseph County)	X				2	Retention election (6 year term)
Superior Court (Vanderburgh County)			X		6	Re-election for additional terms
<b>IOWA</b>						
Supreme Court	X				1	Retention election (8 year term)
Court of Appeals	X				1	Retention election (6 year term)
District Court	X				1	Retention election (6 year term)
<b>KANSAS</b>						
Supreme Court	X				1	Retention election (6 year term)
Court of Appeals	X				1	Retention election (4 year term)
District Court (seventeen districts)	X				1	Retention election (4 year term)
District Court (fourteen districts)				X	4	Re-election for additional terms
<b>KENTUCKY</b>						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Circuit Court			X		8	Re-election for additional terms
<b>LOUISIANA</b>						
Supreme Court				X <sup>9</sup>	10	Re-election for additional terms
Court of Appeals				X <sup>9</sup>	10	Re-election for additional terms
District Court				X <sup>9</sup>	6	Re-election for additional terms

8. Three of the judges run in partisan elections for 6 year terms then have to be re-elected for additional terms.

9. Louisiana judicial elections are partisan inasmuch as the candidates' party affiliations appear on the ballot. However, two factors lead a somewhat nonpartisan character to these elections: (1) primaries are open to all candidates; and (2) judicial candidates generally do not solicit party support for their campaigns.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection	Gubernatorial (G) or Legislative (L) Appointment	Non-Partisan Election	Partisan Election		
<b>MAINE</b>						
Supreme Judicial Court		X(G)			7	Reappointment by governor, subject to legislative confirmation
Superior Court		X(G)			7	Reappointment by governor, subject to legislative confirmation
<b>MARYLAND<sup>10</sup></b>						
Court of Appeals	X				See fn 11	Retention election (10 year term)
Court of Special Appeals	X				See fn 11	Retention election (10 year term)
Circuit Court	X				See fn 11	Nonpartisan election (15 year term) <sup>12</sup>
<b>MASSACHUSETTS<sup>13</sup></b>						
Supreme Judicial Court	X <sup>14</sup>				to age 70	
Appeals Court	X <sup>14</sup>				to age 70	
Trial Court of Mass.	X <sup>14</sup>				to age 70	
<b>MICHIGAN</b>						
Supreme Court					X <sup>15</sup> 8	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
<b>MINNESOTA</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
District Court			X		6	Re-election for additional terms
<b>MISSISSIPPI</b>						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Chancery Court			X		4	Re-election for additional terms
Circuit Court			X		4	Re-election for additional terms
<b>MISSOURI</b>						
Supreme Court	X				1	Retention election (12 year term)
Court of Appeals	X				1	Retention election (12 year term)
Circuit Court					X 6	Re-election for additional terms
Circuit Court (Jackson, Clay, Platte, Saint Louis, Greene Counties)	X				1	Retention election (6 year term)
<b>MONTANA</b>						
Supreme Court			X		8	Re-election; unopposed judges run for retention
District Court			X		6	Re-election; unopposed judges run for retention
<b>NEBRASKA</b>						
Supreme Court	X				3	Retention election (6 year term)
Court of Appeals	X				3	Retention election (6 year term)
District Court	X				3	Retention election (6 year term)

10. Merit selection established by executive order in Delaware, Maryland, Massachusetts, and New Hampshire. In all other jurisdictions merit selection established by constitutional or statutory provision.

11. Until the first general election following the expiration of one year from the date of the occurrence of the vacancy.

12. May be challenged by other candidates.

13. Merit selection established by executive order in Delaware, Maryland, Massachusetts, and New Hampshire. In all other jurisdictions merit selection established by constitutional or statutory provision.

14. The appointment is subject to approval by an eight-member governor's council.

15. Although party affiliations for Supreme Court candidates are not listed on the general election ballot, candidates are nominated at party conventions.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection	Gubernatorial (G) or Legislative (L) Appointment	Non-Partisan Election	Partisan Election		
<b>NEVADA</b>						
Supreme Court			X		6	Re-election for additional terms
District Court			X		6	Re-election for additional terms
<b>NEW HAMPSHIRE<sup>15</sup></b>						
Supreme Court	X <sup>16</sup>				to age 70	
Superior Court	X <sup>16</sup>				to age 70	
<b>NEW JERSEY</b>						
Supreme Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
Appellate Division of Superior Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
Superior Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
<b>NEW MEXICO</b>						
Supreme Court	X				until next general election	See Footnote 17
Court of Appeals	X				until next general election	See Footnote 17
District Court	X				until next general election	See Footnote 17
<b>NEW YORK</b>						
Court of Appeals	X				14	See Footnote 18
Appellate Division of the Supreme Court	X				5	Commission reviews and recommends for or against reappointment by governor
Supreme Court				X	14	Re-election for additional terms
County Court				X	10	Re-election for additional terms
<b>NORTH CAROLINA</b>						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Superior Court			X		8	Re-election for additional terms
<b>NORTH DAKOTA</b>						
Supreme Court			X		10	Re-election for additional terms
District Court			X		6	Re-election for additional terms

15. Merit selection established by executive order in Delaware, Maryland, Massachusetts, and New Hampshire. In all other jurisdictions merit selection established by constitutional or statutory provision.

16. The governor's nomination is subject to the approval of a five-member executive council.

17. Partisan election at next general election after appointment for eight-year term for appellate judges, six-year term for district. The winner thereafter runs in a retention election for subsequent terms.

18. Incumbent reapplies to nominating commission and competes with other applicants for nomination to the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection	Gubernatorial (G) or Legislative (L) Appointment	Non-Partisan Election	Partisan Election		
<b>OHIO</b>						
Supreme Court				X <sup>19</sup>	6	Re-election for additional terms
Court of Appeals				X <sup>19</sup>	6	Re-election for additional terms
Court of Common Pleas				X <sup>19</sup>	6	Re-election for additional terms
<b>OKLAHOMA</b>						
Supreme Court	X				1	Retention election (6 year term)
Court of Criminal Appeals	X				1	Retention election (6 year term)
Court of Appeals	X				1	Retention election (6 year term)
District Court			X		4	Re-election for additional terms
<b>OREGON</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
Tax Court			X		6	Re-election for additional terms
<b>PENNSYLVANIA</b>						
Supreme Court				X	10	Retention election (10 year term)
Superior Court				X	10	Retention election (10 year term)
Commonwealth Court				X	10	Retention election (10 year term)
Court of Common Pleas				X	10	Retention election (10 year term)
<b>RHODE ISLAND</b>						
Supreme Court	X				Life	
Superior Court	X				Life	
Worker's Compensation Court	X				Life	
<b>SOUTH CAROLINA</b>						
Supreme Court		X (L) <sup>20</sup>			10	Reappointment by legislature
Court of Appeals		X (L) <sup>20</sup>			6	Reappointment by legislature
Circuit Court		X (L) <sup>20</sup>			6	Reappointment by legislature
<b>SOUTH DAKOTA</b>						
Supreme Court	X				3	Retention election (8 year term)
Circuit Court			X		8	Re-election for additional terms

19. Although party affiliations for judicial candidates are not listed on the general election ballot, candidates are nominated in partisan primary elections.

20. South Carolina has a 10 member Judicial Merit Selection Commission that screens judicial candidates and reports the findings to the state's General Assembly. Since 1997, the Assembly is restricted to voting only on those candidates found qualified by the Judicial Merit Selection Commission. However, the nominating commission itself is not far removed from the ultimate appointing body, and cannot be considered to be nonpartisan as control over member nominations is vested in majority party leadership. Although most nominating commissions contain members appointed by the governor or legislature, no other commissions actually contain the governor or current legislators who have final approval over the candidate as voting members of the commission. In contrast, the Judicial Merit Selection Commission in South Carolina contains 6 current members of the General Assembly appointed by the Speaker of the House of Representatives, the Chairman of the Senate Judiciary Committee, and the President Pro Tempore of the Senate. State legislators also choose the remaining 4 members of the Commission who are selected from the general public.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection	Gubernatorial (G) or Legislative (L) Appointment	Non-Partisan Election	Partisan Election		
<b>TENNESSEE</b>						
Supreme Court	X				until next biennial general election	Retention election (8 year term)
Court of Appeals	X				until next biennial general election	Retention election (8 year term)
Court of Criminal Appeals	X				until next biennial general election	Retention election (8 year term)
Chancery Court				X	8	Re-election for additional terms
Criminal Court				X	8	Re-election for additional terms
Circuit Court				X	8	Re-election for additional terms
<b>TEXAS</b>						
Supreme Court				X	6	Re-election for additional terms
Court of Criminal Appeals				X	6	Re-election for additional terms
Court of Appeals				X	6	Re-election for additional terms
District Court				X	4	Re-election for additional terms
<b>UTAH</b>						
Supreme Court	X				First general election	Retention election (10 year term)
Court of Appeals	X				3 years after appointment	Retention election (6 year term)
District Court	X					Retention election (6 year term)
Juvenile Court	X					Retention election (6 year term)
<b>VERMONT</b>						
Supreme Court	X				6	Retained by vote of General Assembly (6 year term)
Superior Court	X				6	Retained by vote of General Assembly (6 year term)
District Court	X				6	Retained by vote of General Assembly (6 year term)
<b>VIRGINIA</b>						
Supreme Court		X(L)			12	Reappointment by legislature
Court of Appeals		X(L)			8	Reappointment by legislature
Circuit Court		X(L)			8	Reappointment by legislature
<b>WASHINGTON</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Superior Court			X		4	Re-election for additional terms
<b>WEST VIRGINIA</b>						
Supreme Court				X	12	Re-election for additional terms
Circuit Court				X	8	Re-election for additional terms

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection	Gubernatorial (G) or Legislative (L) Appointment	Non-Partisan Election	Partisan Election		
<b>WISCONSIN</b>						
Supreme Court			X		10	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
<b>WYOMING</b>						
Supreme Court	X				1	Retention election (8 year term)
District Court	X				1	Retention election (6 year term)

# THE AMERICAN JUDICATURE SOCIETY'S ELMO B. HUNTER CITIZENS CENTER FOR JUDICIAL SELECTION

The Hunter Center for Judicial Selection was founded in 1991 to further the American Judicature Society's historic interest in judicial selection issues. Today the Center is a nationally recognized research center that conducts, synthesizes, and disseminates empirical research on a wide range of judicial selection issues. Acting as a clearinghouse of information on judicial selection for state court administrators, lawmakers, the media, the legal and academic communities, and court reform organizations, the Center serves its core audiences in a number of ways:

- Undertaking groundbreaking research on such topics as demographic diversity in the merit selection process, the increasing influence of interest groups and political action committees in judicial elections, and the phenomenon of midterm appointments in states that utilize competitive elections for judicial office.
- Working with other court-related organizations to increase public awareness of, and involvement with, state justice issues through forums and public discussions. The Center sponsored the first national forum on judicial selection in Washington, D.C., in March 2000.
- Monitoring and providing assistance to grassroots judicial reform efforts in the states. Center staff worked closely with reform groups in Florida in the fall of 2000 to promote a ballot initiative for merit selection of trial court judges.
- Educating international visitors on methods of judicial selection in the United States and their respective implications for judicial independence and accountability. Recently, the Center has hosted judges and policy makers from China and Nigeria.
- Organizing meetings and conferences for AJS members on judicial selection topics of current interests, such as the 2001 annual meeting on AJS' role in reforming judicial campaigns.

The publications and resources available through the Hunter Center include the following:

- ***Judicial Selection in the States*** provides basic information on the initial selection and subsequent retention of judges on state appellate courts and trial courts of general jurisdiction.
- ***Judicial Merit Selection: Current Status*** is a detailed description of merit selection provisions in states that utilize "merit selection" of judges, or appointment through nominating commissions, at some level of court.
- ***Research on Judicial Selection*** is an annual, peer-reviewed journal that provides a forum for scholarly research and debate on a wide range of judicial selection issues.
- ***The Continuing Effort to Create Nonpartisan Judiciaries in the State Courts*** details efforts to promote merit selection in Illinois, describes obstacles that have impeded these efforts, and serves as a guide for judicial selection reform in other states.
- ***Judicial selection in the United States: a special report*** depicts the historical evolution of judicial selection in the United States.
- ***Judicial Selection in The United States: A Compendium of Provisions*** is a compilation of state statutory and constitutional provisions relating to judicial selection.
- ***Model Judicial Selection Provisions*** incorporates existing constitutional and statutory provisions, executive orders, earlier efforts to develop selection plans, and recent experiences of judicial nominating commissions across the country.
- ***Ensuring Judicial Excellence*** is a video that describes the benefits of judicial merit selection through interviews with voters, judges, attorneys, and judicial nominating commissioners.
- ***Merit Selection: Current Status, Procedures, and Issues*** reviews the history of merit selection, describes the structural and procedural characteristics of current plans, and examines empirical studies of the impact of merit selection. It also discusses current issues affecting merit selection, such as the Americans with Disabilities Act, Voting Rights Act, and judicial performance evaluations.
- ***Two monographs, The Law and Ethics of Judicial Election Campaigns and A Handbook of Judicial Election Reforms*** survey the problems with, and proposed solutions for, judicial elections.
- ***Handbook for Judicial Nominating Commissioners*** teaches procedures for various nominating commission tasks, from conducting an organizational meeting, to recruiting, investigating, and interviewing applicants for judgeships, to voting for the best qualified candidates and submitting their names to the appointing authority.

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MEMORANDUM

DATE: May 24, 2007  
TO: Assemblyman Bernie Anderson, Chairman  
Members of the Assembly Committee on Judiciary  
FROM: Jennifer M. Chisel, Senior Research Analyst  
Research Division  
SUBJECT: **Judicial Elections**

This memorandum responds to questions by Committee members during the May 23, 2007, work session for Senate Joint Resolution No. 2. Attached are three charts that provide the raw data for Supreme Court and district court elections for 2002, 2004, and 2006. This data came from contribution and expense reports that candidates must file with the Secretary of State's Office or with the county where the election is held.

Assemblyman Manendo requested the average cost for a judicial election in the counties of Carson, Clark, Elko, Washoe, and another rural county. In order to provide the clearest information, the raw data is presented instead. In addition, court personnel indicated that many variables factor into the cost of an election; therefore, an average may be misleading.

The information presented does not include data for justice courts or municipal courts since S.J.R. 2 applies to elections for Supreme Court justices and district court judges.

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Enc.

**2002 Supreme Court and District Court Races**  
3 out of 13 candidates ran opposed

**DISTRICT COURTS**

Candidates	Percentage of Vote	Contributions Reported	Expenses Reported	County
<b>District 1 Department 1</b>				
Michael Griffin	77%	\$150	\$150	Storey
<b>District 1 Department 2</b>				
William Maddox	70%	\$9,200	\$9,300	Storey
<b>District 3 Department 1</b>				
David Huff	92%	\$0	\$150	Churchill/Lyon
<b>District 3 Department 2</b>				
Archie Blake	91%	\$0	\$150	Churchill/Lyon
<b>District 3 Department 3</b>				
Robert Estes	91%	\$0	\$150	Churchill/Lyon
<b>District 5 Department 1</b>				
John Davis	77%	\$0	\$650	Esmeralda/Mineral/ Nye
<b>District 5 Department 2</b>				
Laurel Duffy	28%	\$6,000	\$26,000	Esmeralda/Mineral/ Nye
Robert Lane	65%	\$41,000	\$38,000	Esmeralda/Mineral/ Nye
<b>District 6 Department 1</b>				
Richard Wagner	80%	\$0	\$450	Humboldt/Lander/ Pershing
<b>District 6 Department 2</b>				
John Iroz	53%	\$13,000	\$12,000	Humboldt/Lander/ Pershing
Jerry Sullivan	44%	\$4,000	\$20,000	Humboldt/Lander/ Pershing
<b>District 7 Department 1</b>				
Steve Dobrescu	90%	\$0	\$300	Eureka/Lincoln/ White Pine
<b>District 7 Department 2</b>				
Dan Papez	91%	\$0	\$450	Eureka/Lincoln/ White Pine

**SUPREME COURT**

Candidates	Percentage of vote	Contributions reported	Expenses reported	
<b>Supreme Court Seat B</b>				
Don Chairez	29%	\$133,000	\$186,000	
Bill Maupin	53%	\$317,000	\$325,000	
None	16%			
<b>Supreme Court Seat D</b>				
Mark Gibbons	80%	\$272,000	\$286,000	
None	18%			

2004 Supreme Court and District Court Races 9 out of 9 candidates ran opposed				
DISTRICT COURTS				
Candidates	Percentage of Vote	Contributions Reported	Expenses Reported	County
<b>District 2 Family Division Department 11</b>				
Pete Sferrazza	46%	\$176,000	\$168,000	Washoe
Chuck Weller	54%	\$194,000	\$187,000	Washoe
<b>District 8 Department I</b>				
Ken Cory	51%	\$175,000	\$156,000	Clark
Bill Henderson	49%	\$6,000	\$43,000	Clark
<b>District 8 Department 11</b>				
Mike Davidson	46%	\$75,000	\$66,000	Clark
Betsy Gonzalez	54%	\$170,000	\$161,000	Clark
<b>District 8 Family Division Department D</b>				
Elizabeth Halverson	49%	\$30,000	\$31,000	Clark
Gerald Hardcastle	51%	\$34,000	\$36,000	Clark
<b>District 8 Family Division Department E</b>				
Robert Lueck	45%	\$94,000	\$92,000	Clark
Sandra Pomrenze	55%	\$29,000	\$25,000	Clark
<b>District 8 Family Division Department F</b>				
Bob Gaston	45%	\$81,000	\$88,000	Clark
Stefany Miley	55%	\$97,000	\$95,000	Clark

SUPREME COURT				
Candidates	Percentage of Vote	Contributions Reported	Expenses Reported	
<b>Supreme Court Seat A</b>				
Jim Hardesty	48%	\$644,000	\$595,000	
Cynthia Steel	35%	\$95,000	\$95,000	
None	17%			
<b>Supreme Court Seat E</b>				
John Mason	29%	\$862,500	\$862,100	
Ron Parraguirre	53%	\$620,000	\$615,000	
None	18%			
<b>Supreme Court Seat F</b>				
Michael Douglas	50%	\$215,000	\$194,000	
Joel Hansen	27%	\$48,000	\$48,000	
None	23%			

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2006 Supreme Court and District Court Races 8 out of 9 candidates ran opposed				
DISTRICT COURTS				
Candidates	Percentage of Vote	Contributions Reported	Expenses Reported	County
<b>District 2 Department 7</b>				
Patrick Flanagan	59%	\$74,000	\$47,000	Washoe
Bridget Peck	41%	\$110,000	\$98,000	Washoe
<b>District 3 Department 2</b>				
Leon Aberasturi	55%	\$74,000	\$79,000	Churchill/Lyon
Wayne Pederson	45%	\$56,000	\$56,000	Churchill/Lyon
<b>District 8 Department 16</b>				
Conrad Hafen	41%	\$6,300	\$6,200	Clark
Tim Williams	59%	\$285,000	\$284,000	Clark
<b>District 8 Department 22</b>				
Ron Isreal	45%	\$51,000	\$48,000	Clark
Susan Johnson	55%	\$274,000	\$267,000	Clark
<b>District 8 Department 23</b>				
Elizabeth Halverson	50.3%	\$79,000	\$76,000	Clark
Bill Henderson	49.7%	\$75,000	\$74,000	Clark
<b>District 8 Family Division Department M</b>				
Robert Lueck	45%	\$96,000	\$146,000	Clark
William Potter	55%	\$40,000	\$48,000	Clark

SUPREME COURT				
Candidates	Percentage of Vote	Contributions Reported	Expenses Reported	
<b>Supreme Court Seat C</b>				
Michael Cherry	75%	\$501,000	\$131,000	
None	25%			
<b>Supreme Court Seat F</b>				
Michael Douglas	48%	\$403,000	\$425,000	
Cynthia Steel	36%	\$82,000	\$74,000	
None	15%			
<b>Supreme Court Seat G</b>				
Nancy Becker	38%	\$532,000	\$534,000	
Nancy Saitta	47%	\$647,000	\$576,000	
None	15%			

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**LAS VEGAS SUN**

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# Voters can't be trusted

**By *Jon Ralston***

Wed, Nov 19, 2008 (2:01 a.m.)

As the short, unhappy judicial career of Elizabeth Halverson mercifully comes to an end this week — barring a reversal by the state Supreme Court — let's be clear who deserves culpability for her ever possessing a black robe.

Don't blame Halverson, removed from the bench Monday by the Judicial Discipline Commission. She is not the problem; she is a symptom. The source of the condition, which will recur, lies with the voters.

Not only the 151,800 voters who elected Halverson in 2006 by less than a percentage point, but also the large subset of the electorate that clings so bitterly to a right most voters don't take seriously when given the chance to exercise it: the right to elect judges.

What is it going to take for Nevada to adopt a judicial selection system that produces a higher caliber of jurists? How many more Halversons have to be shown to be unfit to serve — and I bet we elected a few more a couple of weeks ago — before the public, the media and private interests realize what is at stake? Do we need a Supreme Court race to be clouded — maybe even decided — by an alleged cash-for-recusal scheme involving the supposed dangling of \$200,000 in contributions before we realize that this system is abhorrent?

This is not just about Halverson, who is more of an exception than the rule because she made her shortcomings so manifest. Several incumbents were easily reelected not on the basis of their stellar judicial records (Hey, look, Don Mosley can ride a horse! And some famous attorneys love Jesse Walsh!) but because they had enough money to drown opponents, some of them quite credible, in the mail and on television.

Some of the judges — Walsh was a notable exception — even refused to debate their foes, even though many who challenged incumbents this cycle were qualified for the bench. Mosley, Michelle Leavitt and Cheryl Moss all avoided televised debates with their perfectly reasonable opponents, an arrogant abuse of their positions amplified by their ability to simply run better (i.e., better funded) campaigns. This is how the voters provide not the inoculation for black robe disease but the contaminant that spreads the contagion through the 8th Judicial District.

Let's be honest: When it comes to voting for judges, most voters — not some, most — have no clue whom they are voting for or, worse, waste the right they have been given.

Halverson was elected in 2006 even though a huge majority of those 151,800 people had no idea who she was. Many probably voted for the woman (that happens a lot in judicial races) or used some other scientific method (her name was first on the ballot, or eenie, meenie, miney, moe, perhaps?).

Consider what happened this cycle when tens of thousands of people did not even cast votes in judicial races because they either were lazy or ignorant — or both. If this right to vote for judges is so precious

then why did nearly 200,000 voters skip the Henderson-Hoskin race? And that was the rule, not the exception, as a quarter or more of the electorate skipped the judicial races.

There has to be a better way. And there is.

The 2007 Legislature overwhelmingly passed Senate Joint Resolution 2, which would allow for an appointive system, with retention elections, as many states have adopted. Thanks mostly to the efforts of then-Senate Majority Leader Bill Raggio and given impetus by a Los Angeles Times series that made the Nevada judiciary look like a good old boys club, SJR2 passed overwhelmingly in both houses. It needs to make it through the 2009 Legislature, too, to be eligible for the 2010 ballot, when voters (the weak link again) must approve taking away their right to select judges.

These are the same folks who will not complain that Halverson was removed from the bench this week by an unelected commission. Where is the wailing about a system that allows a group of appointees to be judge and jury over a duly elected official? I thought so.

Yes, an appointive system is the lesser of evils — and could be very evil if not done correctly. But if it is, with proper vetting system in place and populated by qualified, thoughtful people, even a governor committed to cronyism would have little latitude once the finalists are submitted to him or her.

It's time. We elected more Elizabeth Halversons to the bench a couple of weeks ago — I just have a feeling. Only by supporting SJR2 can we change the system that allows the ignorant and lazy to pass judgment on who should be a judge.

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## Supreme Court commission approves plan to change how judges are chosen

By SEAN WHALEY  
REVIEW-JOURNAL CAPITAL BUREAU

CARSON CITY -- Members of a panel studying Nevada's court system voted overwhelmingly Wednesday to endorse a plan that could change the way judges in the state are chosen.

The Nevada Supreme Court's Article 6 Commission voted 18-2 to support Senate Joint Resolution 2, a proposed constitutional amendment. If approved by voters, the amendment would end Nevada's 143-year tradition of allowing voters to pick judges in contested elections.

The Legislature passed the proposal in 2007 but must approve it a second time in 2009 before it could go to the voters for their decision in the 2010 general election.

Senate Majority Leader Bill Raggio, R-Reno, a member of the Article 6 Commission, is sponsoring the change. It would require the initial appointment of judges with voters then being asked whether they should be kept or not.

"This is not a perfect solution," Raggio said. "But it is certainly a giant step forward towards establishing more confidence in the perception of the judicial process. This isn't going to take away the right of the public to vote."

But MGM Mirage Senior Vice President Paula Gentile, co-chairwoman of the commission, opposed the proposal, saying what is needed is more focus on judicial performance and evaluation.

"I just don't think changing the method of selecting judges, appointing rather than election, necessarily adds anything to the equation," she said.

Under SJR2, a Commission on Judicial Performance would be appointed to prepare information for voters about the performance of judges seeking to keep their jobs.

But Supreme Court Chief Justice Mark Gibbons, who sat in on the meeting but is not a member of the commission, said the court is moving forward independently with its own comprehensive evaluation of the judiciary.

Justice Bill Maupin said the evaluation process being looked at, which would seek responses from not only attorneys but others, including witnesses and jurors, would serve two purposes. Voters would have more information, and the jurists themselves could use the information for professional improvement, he said.

The Supreme Court will decide whether the evaluation process is put into use in the state, which could go forward regardless of whether voters approve SJR2.

Also speaking in favor of SJR2 was Judge Stephen George, who serves on the Henderson Justice Court. George said the appointment process will give voters more say than the current system.

Most judges run unopposed, and getting just one vote on election day returns the judge to the bench, he said. Under the retention process, a judge would have to get 55 percent of the vote to remain in office, George said.

What this does is give more power to the people," he said.

Under Raggio's proposal, each judge would be appointed by the governor from a list of three final candidates reviewed by the Commission on Judicial Selection. If dissatisfied with the first three candidates, the governor could request a second list of three candidates.

After serving their first terms, judges would face "yes" or "no" retention elections.

Previous efforts to change the method of selecting judges have been rejected by voters.

Also, the Article 6 Commission voted unanimously to support another constitutional amendment in the Legislature, one which would create an intermediate court of appeals. The proposal, Senate Joint Resolution 9, must be approved again by the 2009 Legislature before it could appear on the ballot in 2010.

Supreme Court Justice James Hardesty supported the measure, saying it would allow the Supreme Court to focus on more important cases while as many as 1,000 routine appeals yearly could be addressed more efficiently by the three-judge intermediate court.

The cost would be about \$1.2 million a year for the judges and their staff, with no new space requirements necessary, he said.

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*The ordinary administration of criminal and civil justice . . . contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence towards the government.*

Nevada is one of 21 states that selects its judges by popular election. On March 26, 2008, the Article 6 Commission voted overwhelmingly to endorse Senate Joint Resolution 2 ("SJR 2"). SJR 2 calls for a constitutional amendment changing the method for selecting judges. Under SJR 2, all judicial vacancies will be filled by a process colloquially referred to as "merit selection." The selection process will be identical to the process already in place for filling mid-term judicial vacancies. All incumbent judges will be accountable through a retention election in which they run against their own records. SJR 2 also requires the creation of a judicial performance evaluation commission that will publish performance reports before each retention election. Any judge who does not receive 55% of the vote will not be retained.

Good-faith advocates disagree about the merits and demerits of each system. Neither system is perfect, and either system will yield exemplary judges. Similar efforts to amend the Nevada Constitution were rejected by voters in 1972 and 1988. SJR 2 may be timely now, and successful with the voters in 2010, because the judicial election landscape is rapidly deteriorating. Judicial elections are influenced by broader campaign speech, special interests, partisan politics, and increased funding in ways unseen in the past. Justice Sandra Day O'Connor, who joined the *Republican Party v. White* majority, recently lamented that judicial elections are becoming "political prizefights where partisans and special interests seek to install judges who will answer to them instead of the law and

constitution. . . . I hope that every state that elects judges in partisan elections will consider reforms." Similarly, Justice John Paul Stevens stated, "It was never contemplated that the individual who has to protect our individual rights would have to consider what decision would produce the most votes."

Since 1999, candidates for state supreme courts raised over \$157 million. In 2004, two Illinois Supreme Court candidates set a record for what was then the most expensive judicial race in American history, spending more than \$9.3 million. The influence of third-party special interest groups and partisan parties was also unprecedented. The election cycle of 2006 was even more expensive. The aggregate amount raised by all supreme court candidates was \$34.4 million. Five of the ten states with supreme court races set new judicial fundraising records. More than \$13.4 million was spent in Alabama alone. Georgia Supreme Court races went from \$39,000 in 2000 to \$4 million in 2006. Nevada Supreme Court candidates and special interest groups spent almost \$3 million in 2006. Broadcast television advertising was prominent in 10 of 11 states, compared to 4 of 18 states in 2000. Special interest money was substantial in 2006, but the total amount is unknown because many states do not have adequate campaign finance regulations. It is estimated that special interest groups spent \$15 million in 2006. If this is accurate, the cost of supreme court elections in 2006 was \$50 million. The 2006 cycle has been described as "the most threatening year to America's courts. Special interest pressure is metastasizing into a permanent national

campaign against impartial justice." In 2007, candidates for a position on the Wisconsin Supreme Court spent \$6 million, and candidates for the Michigan Supreme Court are expected to spend \$20 million this year.

Judicial candidates are also saying and promising more during their campaigns because of relaxed canonical restrictions flowing from *Republican Party v. White*. Special interest groups are using questionnaires as their tool of choice in the new judicial election landscape. Candidates are asked to take positions on complex legal issues by checking a simple box on the questionnaire. The questions elicit positions on partisan issues such as capital punishment, definition of marriage, home schooling, abortion, gambling, border control, gun control, taxation, tort reform, environment, business, and displaying the Ten Commandments. Candidates who decline participation based upon the "Commit Clause" or "Pledge or Promise Clause" of their ethics codes expose their states to lawsuits. A candidate for the Kentucky Supreme Court recently said: "The rules have changed. I agree with the new rule because I believe the old system kept the voters in the dark and was arbitrary and elitist. I want you, the voters, to know that I oppose abortion. I support having the Ten Commandments in our schools and courthouses. . . . I support the Second Amendment right to bear arms. . . . I believe marriage is between only one man and one woman. I live a life of traditional western Kentucky values. I think the way you think." The message of contemporary judicial elections is clear: lawyers who want to become judges and

judges who want to remain on the bench must answer to special interest groups and political partisans.

The politicization of the judiciary is becoming apparent to voters. A national poll commissioned by Justice at Stake demonstrated 76% of Americans are concerned that campaign contributions influence the outcome of judicial decisions. A 2008 Minnesota poll revealed concern that special interest money and partisan politics threaten the judiciary. 78% of respondents reported they are "very" or "somewhat" concerned that judicial candidates must raise more money, run television advertisements, and lobby for the support of political parties and special interest groups. 85% of respondents reported that having judicial candidates make campaign pledges represent a risk to the fairness and impartiality of the judiciary. 75% of respondents reported that campaign fundraising represents a threat to the fairness and impartiality of the judiciary. 74% of respondents supported a constitutional amendment calling for merit selection and retention. A 2008 Wisconsin poll produced similar results. A recent Zogby poll of business leaders demonstrates that 79% of respondents believe campaign contributions have a major influence on judicial decisions. 90% of respondents were concerned that campaign contributions and political pressure will make judges accountable to politicians and special interest groups instead of the law and the Constitution.

The historical origins of popular election exceed the space limitations of this essay. Popular elections are partly in response to monarchical control, inclusive political power, and the influence of Jacksonian Democracy. Policymakers in the late 19th Century began questioning the wisdom of infusing elective politics into an apolitical branch of government. Judge Roscoe Pound delivered his timeless *Causes of Popular Dissatisfaction with the Administration of Justice* to the American Bar Association in 1906. Pound asserted that "putting courts into politics, and compelling judges to become politicians in many jurisdictions . . . [has] almost destroyed the traditional respect for the bench." Similarly, William Howard Taft said in a speech before the Cincinnati Bar Association that it was "disgraceful" to see supreme court candidates campaigning

by reference to a particular "class flavor." It was "so shocking, and so out of keeping with the fixedness of moral principles" that it ought to be condemned.

The support for merit selection among bar associations, judges, lawyers, and scholars has consistently grown during the last several decades. The American Judicature Society leads the reform movement by promoting merit selection and retention through the Elmo B. Hunter Citizens Center for Judicial Selection. The AJS recently received a \$200,000 grant to promote merit selection in reform-friendly states. The

In the final analysis, the Nevada judiciary is at risk of losing its essential strengths: independence, impartiality, and appropriate accountability.



AJS identifies Nevada as a reform-friendly state. The State Justice Institute is equally energetic in its education and outreach assistance.

In the final analysis, the Nevada judiciary is at risk of losing its essential strengths: independence, impartiality, and appropriate accountability. Even if there are no actual risks to these pillars of judicial function, the public's confidence in the judiciary erodes as the role of special interests, partisan politics, and financial influences increases. SJR 2 may be necessary merely because the appearance of such influences robs the judiciary of its legitimacy.

Courts derive their legitimacy from their actual and apparent neutrality. The executive and legislative branches are animated by partisan elections in which office seekers make promises and are expected to keep their promises after assuming office. Political parties have platforms, ideologies, and constituencies. The personality of the officeholder can sometimes be subordinate to party ideals. In contrast, courts should have no ideology or constituency. No person should ever enter the courtroom fearing politics, special interests, or financial influences will predominate over the rule of law. SJR 2 may be necessary to promote public confidence in the independence

and integrity of the judiciary.

SJR 2 is not a power play for judges. SJR 2 works against the personal interests of unopposed incumbent judges. Under the current popular election system, an unopposed candidate (whether incumbent or not) needs one vote to win. Under SJR 2, all judges will need 55% of the vote to retain their seats. Judges will be more accountable every election cycle. Judicial performance evaluations and voter information guides will expose judges who need an invitation to seek other employment. It is also a common misconception that voters will lose their right to vote for judges. Voters will not initially select judges. The initial selection will be made by appointment after a nonpartisan selection committee examines each applicant's qualifications and forwards the three most qualified applicants to the Governor. In an effort to provide greater confidence and transparency, the selection committee process is now open to the public. After appointment, every voter may pull the metaphorical lever for or against every judge in the State of Nevada. Thus, "voters could fire a judge but not hire one."

Proponents of SJR 2 may have reason to be cautiously hopeful about its success. In 1996, Nevada voters rejected by a 70-30 margin a proposed constitutional amendment imposing term limits on judges. The initiative measure was passed by the voters in the preceding election, but ultimately defeated because lawyers, judges, and concerned citizens mobilized to educate the public. The pivotal message for voters about SJR 2 is that Nevada depends upon strong courts to protect the rule of law by fairly and impartially deciding legal disputes. Strong courts are essential to democracy and provide a balance of government power. Partisans and special interests weaken the courts. Courts are accountable to the Constitution and statutory law, not to political or financial influences. I commend SJR 2 for your thoughtful consideration.

*This is another in a series of essays on judicial ethics authored by Judge David Hardy, Second Judicial District Court Family Division.*



**TESTIMONY OF  
SENATOR WILLIAM RAGGIO**

**SENATE JUDICIARY COMMITTEE  
FEBRUARY 23, 2009**

**SENATE JOINT RESOLUTION NO. 2, WHICH WAS APPROVED BY THE 2007 SESSION, PROPOSES TO AMEND THE NEVADA CONSTITUTION TO PROVIDE FOR THE INITIAL APPOINTMENT BY THE GOVERNOR OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE DISTRICT COURT. AFTER THE INITIAL APPOINTMENT, IF A JUSTICE OR JUDGE WISHES TO SERVE ANOTHER TERM, HE OR SHE MUST MAKE A DECLARATION OF CANDIDACY FOR A RETENTION ELECTION. IF 55 PERCENT OR MORE OF THE VOTES CAST ARE IN FAVOR OF THE RETENTION OF THE JUSTICE OR JUDGE, HE OR SHE WILL THEN SERVE A 6 YEAR TERM AND MUST RUN IN A RETENTION ELECTION IF ANOTHER 6 YEAR TERM IS DESIRED. IF THE JUSTICE OR JUDGE DOES NOT MAKE A DECLARATION OF CANDIDACY FOR A RETENTION ELECTION OR IF LESS THAN 55 PERCENT OF THE VOTES CAST ARE IN FAVOR OF RETENTION, A VACANCY IS CREATED AT THE END OF THE TERM WHICH MUST BE FILLED BY APPOINTMENT BY THE GOVERNOR.**

**SJR 2 ALSO REQUIRES EACH JUSTICE OR JUDGE WHO HAS MADE A DECLARATION OF CANDIDACY FOR A RETENTION ELECTION TO UNDERGO A REVIEW OF HIS OR HER PERFORMANCE AS A JUSTICE OR JUDGE. THIS RESOLUTION CREATES THE COMMISSION ON JUDICIAL PERFORMANCE AND REQUIRES THE COMMISSION TO PERFORM THESE REVIEWS. THE REVIEW OF EACH JUSTICE OR JUDGE IS REQUIRED TO CONSIST OF A REVIEW OF THE RECORD OF THE JUSTICE OR JUDGE AND AT LEAST ONE INTERVIEW OF THE JUSTICE OR JUDGE. AT THE CONCLUSION OF THIS REVIEW, THE COMMISSION IS REQUIRED TO PREPARE AND RELEASE TO THE PUBLIC A REPORT CONTAINING INFORMATION ABOUT THE REVIEW AND A RECOMMENDATION ON THE QUESTION OF WHETHER THE JUSTICE OR JUDGE SHOULD BE RETAINED.**

**I AND THE OTHER SPONSORS HAVE PROPOSED THIS AMENDMENT OF THE CONSITUTION BECAUSE TOO OFTEN JUDICIAL ELECTIONS BECOME EMBROILED IN POLITICS. THIS APPOINTMENT SYSTEM WITH RETENTION ELECTIONS WOULD IN LARGE MEASURE REMOVE JUDGES FROM PARTISAN POLITICS AND WOULD FREE JUDGES FROM THE NECESSITY OF SOLICITING POLITICAL CONTRIBUTIONS FROM ATTORNEYS, LAW FIRMS, LITIGANTS AND POTENTIAL LITIGANTS (THE USUAL SOURCE OF FINANCIAL CONTRIBUTIONS IN JUDICAL ELECTIONS).**

**THE DISTRICT OF COLUMBIA AND TWENTY THREE STATES, WHICH ARE AMONG THE MOST PROGRESSIVE IN JUDICIAL REFORM, HAVE ADOPTED A NOMINATING COMMISSION PLAN FOR APPOINTING JUDGES TO AN INITIAL TERM ON THE BENCH. FIFTEEN OF THESE STATES ALSO HOLD RETENTION ELECTIONS AT THE EXPIRATION OF JUDGES' TERMS. THE PEOPLE OF NEVADA HAVE ALREADY APPROVED AN AMENDMENT OF OUR CONSTITUTION WHICH PROVIDES FOR A JUDICIAL SELECTION COMMISSION TO MAKE RECOMMENDATIONS FOR FILLING VACANCIES AT THE SUPREME COURT AND DISTRICT COURT LEVEL. IT IS A SIMILAR COMMISSION, ONE PERMANENT AND ONE TEMPORARY, THAT IS PROPOSED TO MAKE NOMINATIONS FOR THE INITIAL APPOINTMENTS BY THE GOVERNOR.**

**SJR 2 CONTAINS THE BEST FEATURES OF ALL OF THE MERIT SELECTION PLANS. SIMILAR PROPOSALS HAVE BEEN BEFORE THIS BODY AND THE ELECTORATE IN PAST YEARS, BUT WERE UNSUCCESSFUL. THE EVENTS WHICH HAVE OCCURRED SINCE THESE MEASURES WERE CONSIDERED FULLY JUSTIFY THAT THIS ISSUE BE ONCE AGAIN SUBMITTED TO THE PEOPLE OF THIS STATE FOR FURTHER CONSIDERATION.**

**SJR 2 IS INTENDED TO ENSURE INSOFAR AS POSSIBLE AN INDEPENDENT JUDICIARY. IT WILL ALSO ENABLE A JUDGE TO DEVOTE HIS OR HER ENTIRE TIME TO THE BUSINESS OF THE COURT SINCE THE JUDGE WILL NOT HAVE TO TAKE PART IN THE USUAL POLITICAL CAMPAIGNS. THE PLAN ENSURES THAT FULL CONSIDERATION WILL BE GIVEN TO THE ABILITY, CHARACTER AND QUALIFICATIONS OF A JUDICIAL CANDIDATE BEFORE THAT PERSON'S NAME IS PERMITTED TO GO ON THE BALLOT AND WILL CAUSE THE ATTENTION OF VOTERS TO BE FOCUSED ON A JUDGE'S RECORD, MAKING IT EASIER TO REMOVE INCOMPETENT JUDGES FROM OFFICE AND TO RETAIN JUDGES WHOSE RECORDS ARE MERITORIOUS.**

**SJR 2 WILL ENCOURAGE WELL-QUALIFIED PEOPLE TO SERVE ON THE BENCH WHO WOULD NOT OTHERWISE SUBMIT THEMSELVES TO THE ORDEAL OF CAMPAIGNING FOR OFFICE UNDER THE EXISTING POLITICAL SYSTEM OR WHO LACK THE MEANS OF FINANCING SUCH A CAMPAIGN. I BELIEVE IT IS TIME TO GIVE THE PEOPLE OF THIS STATE AN OPPORTUNITY TO ENSURE AN INDEPENDENT JUDICIARY IN THIS STATE AND TO AT THE VERY LEAST SUBMIT IT TO THE VOTERS FOR APPROVAL ON DISAPPROVAL.**

**I BELIEVE THAT THERE IS CONSIDERABLY MORE SUPPORT FOR THIS CONCEPT THAN EVER BEFORE. IN PAST EFFORTS THERE HAS BEEN ALMOST COMPLETE OPPOSITION FROM THE PRINT AND ELECTRONIC MEDIA TO ANY DEPARTURE FROM THE PRESENT ELECTION PROCESS,**

**BUT THIS HAS CHANGED TO SOME EXTENT. FAVORABLE ARTICLES AND EDITORIALS IN SUPPORT OF SJR2 APPEARED IN BOTH THE RENO GAZETTE JOURNAL AND THE LAS VEGAS SUN AND IN SOME T.V. EDITORIAL TYPE COMMENTS.**

**THIS WAS PRECEDED BY AN ARRAY OF NEGATIVE MEDIA REPORTS WHICH WERE HIGHLY CRITICAL OF JUDICIAL PERFORMANCE, AND THE PERCEIVED NEXUS TO CAMPAIGN CONTRIBUTIONS AND PRACTICES. NOTABLY AMONG THESE WERE THE SERIES OF ARTICLES WHICH RAN IN THE LOS ANGELES TIMES IN JUNE OF 2006 PORTRAYING A "STACKED JUDICIARY" IN LAS VEGAS. IN ADDITION THERE HAVE BEEN A NUMBER OF INCIDENTS ALSO WITHIN OUR OWN STATE WHERE ACTIONS OF A JUDICIAL OFFICER HAVE BEEN QUESTIONABLE OR UNETHICAL THAT MAY HAVE HELPED TO ERODE THE PUBLIC'S CONFIDENCE IN OUR JUDICIAL SYSTEM.**

**I PERCEIVE THAT MORE AND MORE LAWYER GROUPS ARE SUPPORTIVE OF THE CONCEPT CONTAINED IN SJR2. THE STATE BAR OF NEVADA HAS GONE ON RECORD SUPPORTING THIS CONCEPT AS HAVE AN INCREASING NUMBER OF LAW FIRMS AND INDIVIDUAL LAWYERS.**

**WHILE NOT ALWAYS TRUE, OF COURSE, IN MY OPINION JUDGES THAT HAVE COME THROUGH THE SELECTION PROCESS HAVE BEEN BETTER QUALIFIED THAN THOSE WHO ARE INITIALLY ELECTED.**

**I HAVE PERUSED THE MATERIALS OFFERED BY THE "JUSTICE AT STAKE" CAMPAIGN. ITS FINDINGS ARE VERY PERSUASIVE. THE AMOUNT OF MONEY SPENT ON CONTESTED JUDICIAL ELECTIONS IS STAGGERING, BUT ONE THING IS CLEAR: RETENTION RACES REQUIRE AND ATTRACT THE LEAST AMOUNT OF MONEY.**

**AND 76% OF VOTERS BELIEVE THAT CAMPAIGN CONTRIBUTIONS HAVE AT LEAST SOME INFLUENCE ON JUDGE'S DECISIONS. EVEN 26% OF STATE JUDGES AGREE.**

**THIS IS REGRETABLE AND UNACCEPTABLE. THIS COUNTRY WAS FOUNDED ON THE CONCEPT OF A FAIR AND IMPARTIAL JUDICIARY. WE NEED TO DO EVERYTHING POSSIBLE TO RESTORE THAT CONCEPT. SJR2 WILL NOT DO THAT ALONE BUT IT IS A STEP IN THE RIGHT DIRECTION.**

**THERE IS NO QUESTION THAT AMERICANS WANT COURTS TO BE ACCOUNTABLE - TO THE LAW, NOT SPECIAL INTERESTS AND PARTISAN TYPE POLITICS. COURTS DERIVE THEIR LEGITEMACY**

**FROM THEIR NEUTRALITY AND INDEPENDENCE AND THIS IS BEING ERODED UNDER OUR PRESENT SYSTEM.**

**I'M QUOTING NOW FROM AN ARTICLE WRITTEN BY ONE DOROTHY SAMUELS, A MEMBER OF THE EDITORIAL BOARD OF THE NEW YORK TIMES, WHICH APPEARED IN THAT PUBLICATION IN DECEMBER 2006.**

**“JUSTICE, THE SAYING GOES, IS BLIND – SYMBOLIZED IN COURT HOUSES ACROSS THE COUNTRY BY STATUES OF LADY JUSTICE, BLINDFOLDED SO SHE CAN RULE WITHOUT FEAR OR FAVOR: BUT INCREASINGLY, THERE IS ONE THING JUSTICE IN AMERICA CAN SEE QUITE CLEARLY – WHO IS GIVING HER MONEY”. “A MODERN RENDITION OF LADY JUSTICE WOULD SHOW HER WITH ONE ARM EXTENDED, REACHING FOR LARGE CAMPAIGN CONTRIBUTIONS. THOSE CONTRIBUTIONS – FROM INSURANCE COMPANIES, BIG BUSINESS, TOBACCO COMPANIES, THE BUILDING AND HEALTH CARE INDUSTRIES, UNIONS, TRIAL LAWYERS, THE RELIGIOUS RIGHT, ENVIROMENTAL GROUPS AND OTHER SPECIAL INTERESTS – DO MORE THAN CREATE A BAD APPEARANCE. THEY SEEM TO BE HAVING AN EFFECT ON THE DECISIONS COURTS ARE MAKING”.**

**SHE ALSO NOTED THAT FORMER JUSTICE SANDRA DAY O'CONNOR, A FERVENT CRUSADER IN HER RETIREMENT FOR PRESERVING JUDICIAL INDEPENDENCE, HAS LATELY EXPRESSED REGRET ABOUT HER DECIDING VOTE IN THE WHITE CASE. JUSTICE O'CONNOR DEVOTED MOST OF HER CONCURRING OPINION TO DETAILING HER LONGTIME OPPOSITION TO JUDICIAL ELECTIONS AND SUPPORT FOR MERIT APPOINTMENT OF JUDGES BUT ULTIMATELY CONCLUDED THAT IF STATES PERSIST IN HAVING JUDICIAL ELECTIONS; CANDIDATES MUST BE ALLOWED TO HAVE THEIR FULL THROATED SAY.**

**UNFORTUNATELY THE PRESENT SYSTEM FOSTERS THE BELIEF THAT COURTS AND JUDGES ARE NOT ACCOUNTABLE, ARE NOT IN ALL CASES FOLLOWING THE LAW AND THIS RESULTS IN EFFORTS LIKE THE J.A.I.L. FOR JUDGES INITIATIVE IN SOUTH DAKOTA.**

**FOR ALL OF THESE REASONS I HAVE ONCE AGAIN PROPOSED A NEW AND IMPROVED VERSION OF MERIT SELECTION; SJR2.**

**I HAVE SEEN SO MANY JUDGES SITTING IN A WAITING ROOM OF A LAW FIRM OR OF A POTENTIAL LITIGANT SEEKING CAMPAIGN CONTRIBUTIONS. I THINK IT IS DEMEANING AND DEGRADING. HERE'S A QUOTE FROM OHIO SUPREME COURT JUSTICE PAUL E. PFEIFFER.**

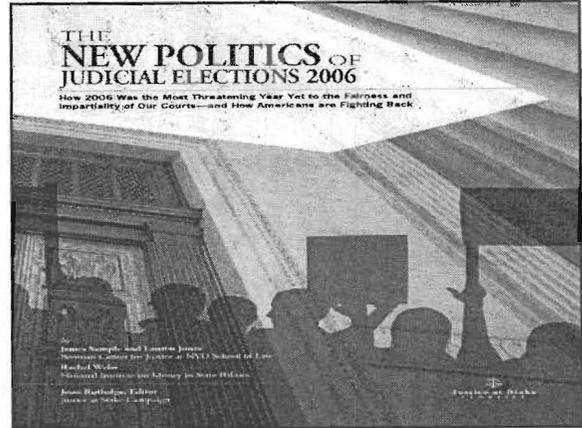
**"I NEVER FELT SO MUCH LIKE A HOOKER DOWN BY THE BUS STATION IN ANY RACE I'VE EVER BEEN IN AS I DID IN A JUDICIAL RACE. EVERYONE INTERESTED IN CONTRIBUTING HAS VERY SPECIFIC INTERSTS. THEY MEAN TO BE BUYING A VOTE. WHETHER THEY SUCCEED OR NOT, IT'S HARD TO SAY".**

**FINALLY, FOR THOSE WHO SAY WE ARE TAKING AWAY THE RIGHT TO VOTE, THIS MEASURE DOES NOTHING OF THE KIND. IT PROVIDES FOR THE PUBLIC TO VOTE ON RETENTION OF A JUDGE'S OR JUSTICE BUT ON THE BASIS OF A COMPETENT REVIEW OF THE JUDGES PERFORMANCE AND A RECOMMENDATION FROM A COMMISSION WHICH IS STRUCTURED TO WEED OUT INCOMPETENCE.**

**WHETHER OR NOT YOU FULLY AGREE, I WOULD URGE YOU TO PASS THIS DURING THIS LEGISLATIVE SESSION AND GIVE THE PUBLIC THE OPPORTUNITY TO DETERMINE IF THIS PROCESS SHOULD BE NOW UTILIZED TO APPOINT OUR DISTRICT AND SUPREME COURT JUDICIARY.**

# The New Politics of Judicial Elections

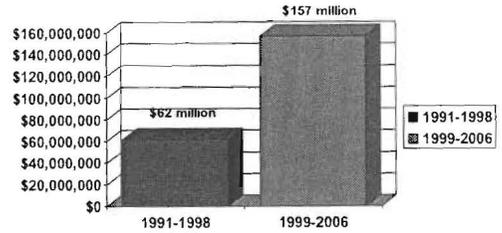
*Money, Ads & Special Interest Pressure*



# Money

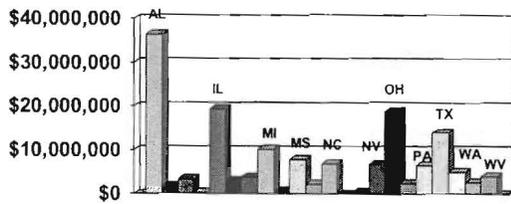


## Supreme Court Candidate Fundraising



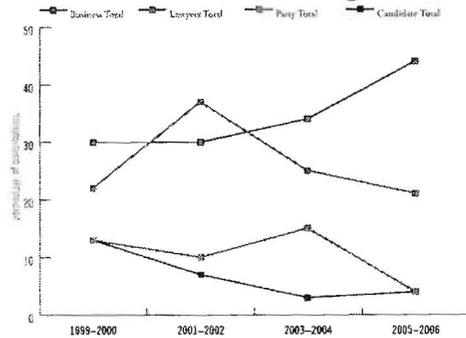
National Institute on Money in State Politics

## Supreme Court Candidate Fundraising, 2000-06



National Institute on Money in State Politics

## Who's Contributing



## Which Elections Attract Money?

- Partisan Races Attract the Most
- Gap Closing (5:1, 1.75:1)
- Retention Races Attract the Least

National Institute on Money in  
State Politics

## 2005-2006

- Candidates → \$34.4 million
- Median → \$243,910
- 10 states topped \$1 million
- Five states set new records
- Groups: \$8.5 million more

## Money Seeps Down

- Illinois Appellate Race: \$3.3 million
- Madison County Trial Race: \$500,000
- Missouri: Chicago \$ ousts trial judge

## Cynicism About Cash in the Courtroom

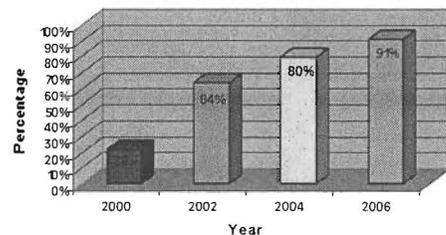
- 76% of voters believe that campaign contributions have at least some influence on judges' decisions
- 79% of business leaders agree
- 26% of state judges agree

Justice at Stake Campaign/CEJ

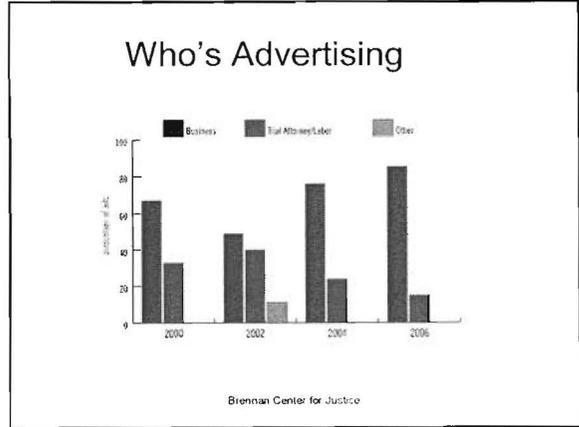
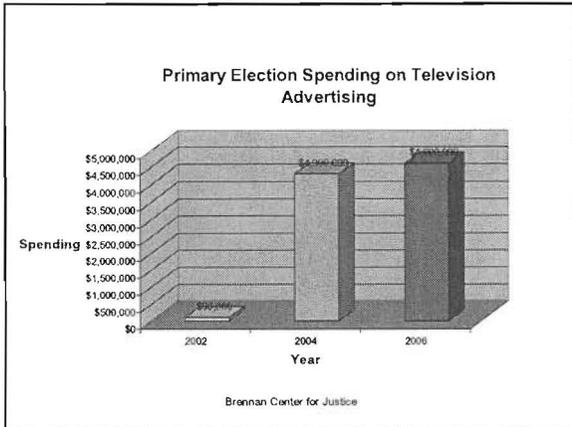
## Television Advertising

  
Justice at Stake  
campaign

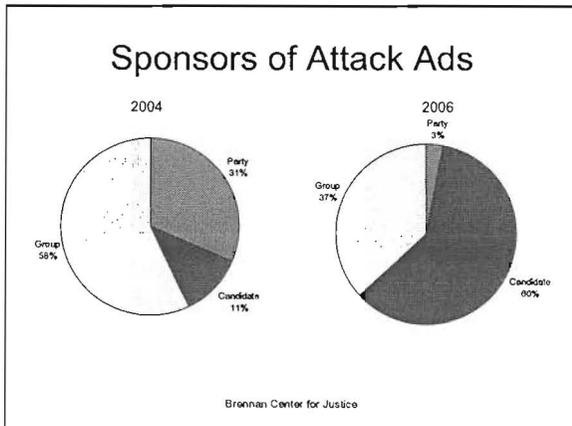
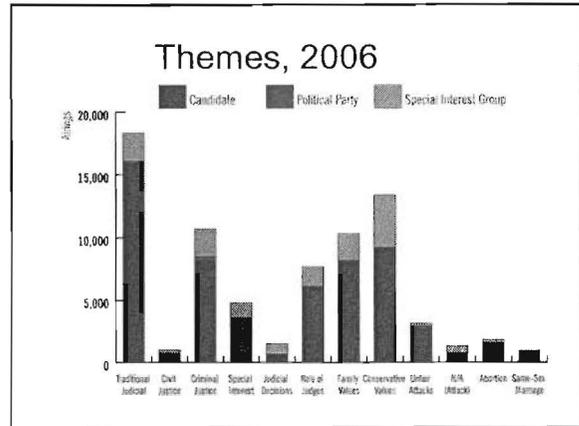
Percentage of States With  
Contested Supreme Court Elections  
Featuring TV Advertising, 2000-2006



Brannan Center for Justice



- ### TV Ads, 2006
- \$16 million
  - Average per state → \$1.6 million
  - Three states broke \$2 million



## Other Special Interest Pressure

Justice at Stake  
campaign

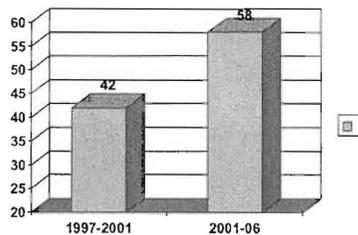
**Republican Party of Minnesota v. White**  
(2002)

- Judicial candidates can “announce their views on disputed issues”
- New tool for interest groups to exert pressure

**Pushy Questionnaires**

- **Abortion, school choice, same-sex marriage, death penalty**
- **“I believe that *Roe v. Wade* was wrongly decided.”**
- **“If you have children, how many?”**

**Impeachment Threats Against State Judges**



Justice at Stake Campaign

**Anti-Court Ballot Measures**

- Strip judicial immunity - “J.A.I.L. 4 Judges” (South Dakota, Amendment E)
- Retroactive term limits on appellate judges (Colorado, Amendment 40)
- Create districts for appellate court elections (Oregon, Amendment 40)
- Repeal mandatory retirement age (Hawaii, Amendment 3)
- Recall of judges for any reason (Montana, CI-98)

**The Good News**

**Americans are Ready to Stand Up to Keep Courts Fair and Impartial**



**Money and TV  
Less Powerful in 2006**

- Candidate with most on-air support won:
  - 85% of time in 2004
  - 67% in 2006
- Candidate with most money won:
  - 85% of time in 2004
  - 68% in 2006

### The *White Stuff* : Outspoken Judges Rejected by Voters

- Tom Parker, AL
- Drayton Nabers, AL
- Wendell Griffin, AR
- Rick Johnson, KY
- Rachel Lea Hunter, NC

### Standing Up to Special Interests

- **Florida:** 5 in 6 refused to answer questionnaires
- **Iowa:** 85% refused
- **Tennessee:** 94% refused

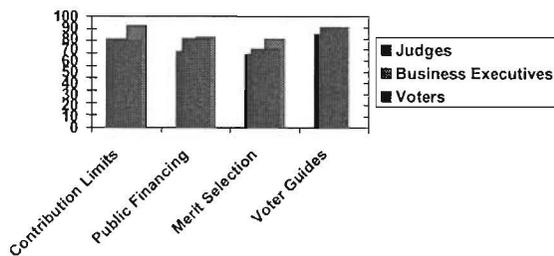
### Anti-Court Ballot Measure Results

SD Amendment E:	89% opposed
CO Amendment 40:	57% opposed
OR Amendment 40:	56% opposed
HI Amendment 3:	57% opposed
MT CI-98:	votes not counted

### Reforms

- **Public Financing**
  - NC: most money from small donors, less than 15% from attorneys
  - NM adopted
  - GA, IL, MI, MT, WA, WI considering
- **Merit Selection**
  - Attacks rejected in AZ, KS, MO
  - MN, PA considering

### Widespread Support for Reforms



### The Last Word: **Accountability**

Americans want courts to be accountable—to the law and the constitution, not special interests and partisan politics



**MINUTES OF THE  
SENATE COMMITTEE ON FINANCE**

**Seventy-fifth Session  
March 9, 2009**

The Senate Committee on Finance was called to order by Cochair Bernice Mathews at 8:08 a.m. on Monday, March 9, 2009, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Bernice Mathews, Cochair  
Senator Steven A. Horsford, Cochair  
Senator Bob Coffin  
Senator Joyce Woodhouse  
Senator William J. Raggio  
Senator Dean A. Rhoads  
Senator Warren B. Hardy II

**STAFF MEMBERS PRESENT:**

Brian Burke, Principal Deputy Fiscal Analyst  
Gary L. Ghiggeri, Senate Fiscal Analyst  
Eric King, Program Analyst  
Cynthia Clampitt, Committee Secretary

**OTHERS PRESENT:**

Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence  
Catherine Cortez Masto, Attorney General, Office of the Attorney General  
Estelle Murphy, Executive Director, Safe Nest, Las Vegas  
Julie Proctor, Executive Director, S.A.F.E. House, Henderson  
Joni Kaiser, Executive Director, Committee to Aid Abused Women  
Betty Raser, Nevada Nurses' Association  
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada  
Jon Sasser, Washoe Legal Services  
Margaret Flint, Arch of Reno Wedding Chapel, Antique Angel Wedding Chapel, Silver Bells Wedding Chapel, Vegas Adventure Wedding Chapel and Reno Chapel of the Bells  
Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce  
Randy Robison, Nevada Association of School Superintendents  
Donna Hoffman-Anspach, Nevadans for Quality Education  
James Wells, CPA, Deputy Superintendent, Fiscal and Administrative Services, Department of Education  
Nathan Sosa, Student, William S. Boyd School of Law  
Joyce Haldeman, Clark County School District  
Yvette Williams, Chair, Clark County Democratic Black Caucus  
Anne Loring, Washoe County School District

COCHAIR HORSFORD:

Perhaps if the voters agree with the Senate Minority Leader on Senate Joint Resolution (S.J.R.) 2 of the 74th Session concerning the appointment of judges, it will help your situation.

**SENATE JOINT RESOLUTION 2 of the 74th Session:** Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)

MR. SARNOWSKI:

A question was asked in the other Committee that I will address here. The question was, "If we were to go to such a system, is there any data out there to suggest appointed judges do not get complained against as much?" I know of no such data. I have not seen such data compiled in states that have appointive systems.

There would likely be fewer complaints made. Make no mistake; people will continue to complain. Federal judges are appointed through an arduous process. They have a separate system for complaints that appears to be utilized more than it ever has been. There will be no election-related complaints; there will not be complaints regarding the manner in which campaign donations were solicited, but, there will likely be other complaints.

SENATOR RAGGIO:

I commend the Commission for the time, effort and detail spent on the two protracted cases, as well as the dedication and diligence I have observed in assuring due process is served. The individuals in those cases could serve as exhibits 1 and 2, to support the need of S.J.R. 2 of the 74th Session.

The Article 6 Commission has made recommendations with respect to transparency. Those of us who serve in the legal profession have observed, more often than not, initial complaints against judges come from people who are dissatisfied with a decision. That is troublesome. There are other remedies such as appeals.

One recommendation of the Article 6 Commission would open the initial complaints to the public. There are currently restrictions against those complaints being made public, even by the person making the complaint. What is your stance on the recommendation?

MR. SARNOWSKI:

Good arguments can be made on both sides of the question. The general rule regarding most Commissions around the country is the complaints are not open until after the disposition process. Nevada's procedure is to open a complaint after the Commission has made a disposition.

Under BDR 1-1110, the final determination will be whether to allow the complaints to be opened fully or on a limited basis. The Commission can operate under either precept. The Legislature will need to determine if it is worthy to open the process enough in cases where the point about people from the losing side in a lawsuit making a complaint.

**BILL DRAFT REQUEST 1-1110:** Revises provisions governing judicial discipline. (Later introduced as Assembly Bill 496.)

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session  
March 12, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:42 a.m. on Thursday, March 12, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Terry Care, Chair  
Senator Valerie Wiener, Vice Chair  
Senator David R. Parks  
Senator Allison Copening  
Senator Mike McGinness  
Senator Maurice E. Washington  
Senator Mark E. Amodei

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst  
Bradley A. Wilkinson, Chief Deputy Legislative Counsel  
Judith Anker-Nissen, Committee Secretary

**OTHERS PRESENT:**

Renny Ashleman, City of Henderson  
Gail J. Anderson, Administrator, Real Estate Division, Department of Business  
and Industry  
Helen A. Foley, T-Mobile USA  
Shirley B. Parraguirre, Clerk, Clark County  
Lee Rowland, American Civil Liberties Union of Nevada

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SENATOR PARKS MOVED TO AMEND AND DO PASS AS AMENDED  
S.J.R. 1.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

CHAIR CARE:

We will open the work session on S.J.R. 2.

**SENATE JOINT RESOLUTION 2 OF THE 74TH SESSION:** Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)

CHAIR CARE:

Mr. Wilkinson, Senator Amodei raised a “none of the above” issue.

MR. WILKINSON:

You wanted me to look at the issue of how this would interact with the “none of these candidates” option on the ballot. First of all “none of these candidates” only applies to statewide offices and presidential elections. It is not an issue with district court judges. We would be talking about Supreme Court justices and court of appeals judges if the court of appeals was created.

However, section 22 of the resolution provides that in a retention election, the question is to be presented in a form provided by law. Were this enacted and approved by the voters, enabling legislation would need to set forth the specific format for that question.

It would seem somewhat illogical and not in keeping with the purpose to have “none of these candidates” as an option on the ballot. The choice presented would be should this candidate be retained as opposed to a choice of candidates. I have looked back at the legislative history of A.B. No. 336 of the 58th Session from 1975 and S.J.R. 2 does need to have that option to accomplish the purpose of that original legislation.

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CHAIR CARE:

Any questions of the Committee on that issue.

SENATOR PARKS MOVED TO DO PASS S.J.R. 2.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS AMODEI, McGINNESS AND WASHINGTON VOTED NO.)

\* \* \* \*

The Committee is adjourned at 9:44 a.m.

RESPECTFULLY SUBMITTED:

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Judith Anker-Nissen,  
Committee Secretary

APPROVED BY:

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Senator Terry Care, Chair

DATE: \_\_\_\_\_

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND  
CONSTITUTIONAL AMENDMENTS**

**Seventy-Fifth Session  
April 30, 2009**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Ellen Koivisto at 3:49 p.m. on Thursday, April 30, 2009, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/75th2009/committees/](http://www.leg.state.nv.us/75th2009/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Ellen Koivisto, Chair  
Assemblyman Harry Mortenson, Chair  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Heidi S. Gansert  
Assemblyman John Hambrick  
Assemblyman William C. Horne  
Assemblyman Ruben J. Kihuen  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom  
Assemblyman James A. Settlemeyer  
Assemblywoman Debbie Smith

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Harvey J. Munford (excused)



**Chair Koivisto:**

Thank you, Mr. Kops. Please provide us with that information as soon as possible, because we do not have a lot of time left in this session.

**Gerald Kops:**

I certainly will.

**Chair Koivisto:**

Are there any questions from the Committee? [There was no response.] Seeing none, we will bring the bill back to Committee and close the hearing on S.B. 160.

[The Committee had a short recess as the Chairs exchanged seats so Chairman Mortenson could convene the Constitutional Amendments portion of the Committee.]

**Chairman Mortenson:**

We will open the hearing on Senate Joint Resolution 2 of the 74th Session.

**Senate Joint Resolution 2 of the 74th Session: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)**

**Senator William J. Raggio, Washoe County Senatorial District No. 3:**

This is my first opportunity this session to appear in the House of the People, and I am privileged to be here and thank you for arranging for this hearing.

The longer you serve in this body, you start to reminisce. I was reminiscing about the bill you just heard, and I talked to a couple of Committee members during the recess. At the risk of wearing out my welcome, I am the culprit. I was the father of the Ethics Commission back in 1977. We used to get accused of having conflicts all the time, so I decided we needed some place we could turn for advisory opinions. That is the reason the Ethics Commission was created. It did not have all the bells and whistles referenced by the last speaker from Las Vegas, or any of the things you heard here today. So I apologize to this Committee for having to go through all this travail. The original intent was to provide public officers with an opportunity to get advisory opinions. Over the years, it has grown into the vehicle and process that it is today. I assume only the responsibility for the initial creation, and nothing else.

Let me address Senate Joint Resolution 2 of the 74th Session. [Senator Raggio gave his testimony by reading from prepared text (Exhibit E).] This is probably

the best crafting of this type of legislation now before any state in this nation. Just for your information, in Nevada, a Supreme Court candidate fund-raising record was broken in 2004. Over \$3 million had to be raised for Supreme Court elections alone. Where does that money come from? It comes primarily from lawyers and litigants and those who have potential issues before the Supreme Court. I provided a list of the states that have instituted this type of judicial reform (Exhibit F). There has been an array of negative media reports concerning judicial performance in Nevada (Exhibit G). The problem is that the public perception has been disturbed by the manner in which we elect judges, and the influence the present system has on the acceptance by the public of the integrity of the courts. As a result, there is considerably more support now for this concept. I think it is timely, since it has passed one session of the Legislature, that we afford the public the opportunity to vote on whether or not this system, which is a better system than was ever presented before, ought to be instituted in the initial selection of judges. This does not take away the right of the public to vote. It gives the public information they do not presently have about electing judges or Justices of the Supreme Court. I am frequently asked who to vote for, for judge and Justice of the Supreme Court, probably because I am a lawyer. That information is really not widely available in any kind of detail for nonpartisan offices such as judicial positions. They are supposed to be unbiased and completely impartial so they can hear all sides of an issue. Today most judges run unopposed, so what does it take for one judge to get elected? One vote. This legislation would require a judge to receive 55 percent of the votes in a retention election. To me, that is giving far more oversight to voters.

I have seen a lot of judges sitting in the waiting rooms of law offices or those of potential litigants seeking campaign contributions. I think it is demeaning and degrading. I would like to read a quote from Ohio Supreme Court Justice Paul E. Pfeiffer into the record:

I never felt so much like a hooker down by the bus station in any race I've ever been in as I did in a judicial race. Everyone interested in contributing has very specific interests. They mean to be buying a vote. Whether they succeed or not, it's hard to say.

We received a letter from former Supreme Court Justice Sandra Day O'Connor. I think it is compelling, and I cannot think of anyone whose credibility or reputation should be more revered than former Supreme Court Justice Sandra Day O'Connor. I would like to read this letter into your record (Exhibit H). It is addressed to Assemblywoman Koivisto and Assemblyman Mortenson and to your Committee.

I understand that the Senate has passed and the Assembly is considering a resolution this week to adopt a merit selection system for Nevada's judges, or at least most of them. This is a topic of interest to me. When I was in the Arizona State Senate I helped construct a change in Arizona's law to adopt a merit selection for our appellate court judges and the judges in our larger counties. It remains one of my proudest achievements, and it has given Arizona as good a judicial system as any in the United States. It has been a great blessing in Arizona, and my sense is that Nevada would be equally well served if you were able to adopt a merit selection system. (In writing this, she had a copy of our proposed resolution.)

Such a system would ameliorate the substantial problems caused by judicial elections. Elections frequently produce judicial candidates who raise money for their campaigns from the very lawyers who will appear before them and from special interest groups that have or will have legal issues to be resolved in the courts. Such fundraising leads to the perception, and sometimes the reality, that justice is not blind but biased. It has been shown that voters in states that elect judges through partisan elections are more cynical about the courts, more likely to believe that judges are legislating from the bench, and less likely to believe that judges are fair and impartial.

An appointment process for judges followed by periodic retention elections offers clear advantages over judicial elections. Citizens can be confident that appointed judges are insulated from special interests who would seek to buy justice through campaign donations. Judges who don't need to raise money for partisan campaigns can focus on applying the law fairly and impartially to each litigant. Retention elections are a critical component of the system. (As I indicated, this would include us with 15 other states that have retention elections.) They provide for accountability without subjecting voters to overt campaigning. Retention elections are most effective when information is gathered on judicial performance and made available to the public through voter guides. These guides give citizens the unbiased information on judicial performance necessary to an informed retention vote. (This goes even further. A commission on judicial performance with all that information, interviews, recommendations, and voting would be in a report.)

One of the most difficult issues for states that use a merit-selection system is the composition of the selection panel. I believe attorney representation on such panels is essential, but that the panels must not be dominated by lawyers. (The permanent commission and temporary commission contain appointments of non-lawyers as well as lawyers.) ... States that allow their selection panels to be dominated by attorneys face the sometimes-founded attack that judicial selection is purely a matter of insider or bar politics. (That is why this resolution and the composition of the performance commissions advocates and includes attorneys and non-attorneys.)

A fair and impartial judiciary is one of the essential elements of good government. I wish you success in supporting a good system of judicial selection for your state....(signed Sandra Day O'Connor).

I appreciate your time and am happy to respond to any questions.

**Assemblywoman Koivisto:**

I have an email from Speaker Buckley's office. She was planning to be here to testify, but because we went so late on the first bill she had to leave.

**Senator Raggio:**

She did appear last session in support of the measure.

**Assemblywoman Koivisto:**

Yes. Do you know what percent of the vote is required for retention in other states that have this system? Also, do you know what these other states' experiences might be relating to fundraising for retention elections?

**Senator Raggio:**

I do not have information on either of your questions, but will be happy to get it for you. The bill we originally introduced had a retention requirement of 60 percent. I think this Committee decided to amend that figure to 55 percent, which is where it is now. It would seem to me that if a person is running unopposed, has a recommendation, but cannot get 55 percent of the vote, it would be hard to justify that individual's retention in office.

**Chairman Mortenson:**

Are there additional questions from the Committee? [There was no response.] Senator, it is going to take a tremendous effort to convince the public to change from an elected system to an appointment system. That is the way it will be

viewed. Are there any entities that are going to work to convince the public of this or do some publicity to encourage it?

**Senator Raggio:**

My experience has been that there is a lot more interest this time than ever before, because of all the negative publicity lately in connection with the judicial election process, as well as the activities of judges. I am not going to name judges, you can name them yourselves—these are judges who probably could be exhibits for this campaign when it occurs—but I can tell you that there is a lot more interest now. The State Bar of Nevada has endorsed the proposal. I do not know whether there will be editorial or financial support. Chair Koivisto asked about campaign funding in other states where there are retention elections. It is just a guess, but I cannot imagine that it would take a lot to finance a retention election. To those who say a judge would never be removed, California has this process and removed three judges. So retention is not automatic; the judge must run on his record. What else can a judge do? What can a candidate for judge promise? A retention election is the fairest way to evaluate a judicial candidate, and the public has the right to vote on that. The answer is that I am not sure, but I think there will be a lot more support for this procedure because of what has occurred over the years and the public's perception about some of these processes.

**James Hardesty, Private Citizen, Reno, Nevada:**

I would like to make clear that I appear here today not in my capacity as Chief Justice of the Supreme Court, but as an individual who has been through this process. I have not been appointed. I always ran as a candidate in the election process, but I do believe this suggestion has enormous merit for consideration. At least the people of the State of Nevada ought to evaluate how we select our judges.

For me, the most important aspect of this bill is the process by which we vet candidates' qualifications to serve as judges. Do we want to pick a judge based upon who has raised the most money, run the best 30-second ad, put up the most campaign signs, or attended the most political events? Or would we rather select a judge who has actually tried cases, can write a sentence of more than three words, has been in a court room, and knows the rules of evidence and the rules of law? I submit that in several elections in this state, judges have run for the district court, which is the general jurisdiction trial court in this state, having never tried a jury trial in their careers. Do you want a person serving as a judge who has never tried a jury trial hearing a death penalty case? Do you want a person hearing a major products-liability case who has never tried a jury

trial before? But that person can hear that case because he won an election and not because he is qualified to serve as a judge.

Similarly, do you want someone serving on the Supreme Court who has never argued a case in the appellate court in his career? Who has never written a brief before an appellate court in his career? Do you want someone serving on the Supreme Court of the state or on the district court who has a mental health problem; who has a drug problem; who has a criminal history—none of which was disclosed in the process of an election campaign—as contrasted with the Commission on Judicial Selection, which I currently chair.

I have been through this process as chairman in two different setups. First, we vetted the candidates for replacement of two family court judges in Clark County. In that process, we not only receive a thorough review of each individual's educational and professional background, but we get criminal background checks, credit checks, tax returns, and the candidates sign releases for access to mental health records and health records. In this process, we found two candidates with criminal backgrounds that probably would not have been disclosed in the process of an election.

Similarly, at the invitation of the Clark County Commission, I chair the committee that is currently vetting candidates for selection to two justice of the peace positions there. We publicly interviewed 28 candidates, and are now down to the final 8 candidates who will be interviewed on May 15. That process utilized the same rules that the Commission on Judicial Selection has adopted following an Arizona model, which is a further reason you should consider endorsing this. Those rules call for a judicial-selection-commission process that is public, in which the interviews are open and anyone can come in and explain to the commission why the individual should or should not be considered as an applicant and recommended to the Governor for appointment.

This is not a "star chamber" process; at least not anymore. We have had a number of people testify in front of the Commission on Judicial Selection at the state level, and in front of the justices-of-the-peace interview process, about candidates they feel should or should not be considered by the Commission or the selection committee.

The other feature of this bill that I think is enormously important and that the court intends to pursue, regardless of what happens with S.J.R. 2 of the 74th Session, is the judicial evaluation system. As the lawyers on this Committee know, judges are currently evaluated through what I would call a "popularity contest" in both ends of the state. The Washoe County Bar

Association's evaluation is a little bit more in-depth, but both are essentially blind reviews of the judges by lawyers only. They do not interview my court staff; they do not talk to my law clerks; they do not interview jurors or witnesses or a whole plethora of people who come in contact with a judge, to evaluate that judge's performance. I submit that there is a lot more involved to being a judge than just submitting yourself to a lawyer's evaluation and a newspaper report. This evaluation report, also trailing on the recommendation of the Arizona model, is a very in-depth, "360 degree review" of the judge's performance in office. We think that would provide a much-improved review of judges for the public to determine on a retention basis.

I would urge the Committee and the Assembly to give the voters an opportunity to review how judges are selected in the state. Judges do not take a position on this matter. I do not take a position on this matter nor does the court, because it is up to the people how they wish to have their judges picked. As far as I am concerned, I will participate in either process, but I share with you my personal experience and what I think provides the best-vetted individual for consideration.

**Chairman Mortenson:**

Are there any questions for the Chief Justice? I see none. Thank you very much for your testimony.

**Robert Crowell, Past President, State Bar of Nevada, Carson City, Nevada:**

I am here appearing as the Past President of the State Bar of Nevada and a practicing lawyer in this state for 36 years. I support S.J.R. 2 of the 74th Session for all the reasons Senator Raggio and retired Justice Sandra Day O'Connor mentioned in her letter to you.

This is an important measure in my view for a number of reasons. I believe this bill takes the money out of judicial elections. Money in judicial elections creates, as you heard earlier, not only the appearance of impropriety, but also the appearance of bias. By the mechanism set forth in S.J.R. 2 of the 74th Session, we go a long way to removing that. It also removes what I think is an awkward situation judges are placed in when they are raising money for their campaigns from lawyers. I get calls all the time asking me to contribute to various judges' campaigns. I do not want to do that, but it is an awkward situation.

I also believe strongly in the election process, and I believe it is important for people to get out and see what is going on in their communities. I believe that is important for judges as well. I believe that this bill, as currently crafted, is a

fair blend between the appointment process and the election process, particularly when it comes to the retention process.

Finally, and most importantly, I believe that this bill enhances the judicial qualifications and quality of our judges in this state. As you heard from Justice Hardesty, it is difficult for judges to explain much about themselves during a judicial election. I cannot tell you the number of times I have been asked what I like about a judge, or why I am voting for a particular judge. I am also asked if I know where a particular candidate for judge stands on particular issues. Candidates routinely say that they cannot answer those questions because if they do, they will be pre-judging the issues.

Citizens are naturally concerned about that dearth of information, because then it is hard for them to make a determination as to whether or not a person should sit on the bench. Citizens cannot get that information because it is difficult for a judge to explain where he would be on various issues, and particularly political issues, without violating the judicial canons of ethics.

I tell people that I look for a judge who is fair, impartial, unbiased, understands the need for access to justice in this system, understands the stress of litigation on not only litigants but lawyers, and is educated in the law. I believe the best way to make those determinations at the first cut is by a judicial selection committee that is properly embodied and charged with evaluating people on those criteria. For those reasons, I urge your passage of S.J.R. 2 of the 74th Session.

**Bruce Beasley, President, State Bar of Nevada, Las Vegas, Nevada:**

I am here to speak on the bill as a citizen and also on behalf of the governing board of the State Bar of Nevada. We urge the passage of S.J.R. 2 of the 74th Session for all the reasons stated by the previous speakers. There are a couple of important considerations that need to be amplified. When I started practicing law in Nevada 30 years ago, Nevada had fewer than a million people divided among a number of counties, small towns, and a couple of fairly good-sized cities. In that circumstance, there was a fairly good chance you either knew the person who was running for judge, or knew someone who knew the person running for judge because you had lived in Nevada all your life. The prospective judges lived in Nevada all their lives and were known in the community.

At least in Clark and Washoe Counties, that simply is not true any more. The counties are too big. Even if the judicial candidates have lived there all their lives, most of the voters have not lived there all their lives, and it is almost

impossible for regular citizens to know any significant number of the people running for office.

I think the system we had worked well for almost 130 years, but the state is much bigger now. It is just not possible for people to know who to vote for using the 30-second sound bites they get. Voters are certainly not going to spend two weeks in a person's court room to get an idea what that judge's judicial demeanor is like.

This proposed system would give people the right to vote-out judges who had not performed. The evaluation committee is much better than anything that currently exists. It is an in-depth evaluation presented to the people like a voter's guide, and the selection process initially is, as Justice Hardesty said, completely open to the public. You can go and watch. It is the system Arizona has. If I were seeking an appointment for judge, any one of you could come and watch me be interviewed. You could hear the questions I get; you could watch people testify against me or for me. If you had a reason and some knowledge of me, you could come in and say you thought I should or should not be appointed judge. That is very different from the system that has existed until very recently here, but it is a system that gives lots of public exposure to the people who are seeking judgeships.

In order for our system of justice to work over the long term, it has to be fair and it has to be impartial. Probably as important or more important, the citizens of Nevada have to believe that the system is fair and impartial. With the statistics you heard from Senator Raggio, and the kind of anecdotal comments I get from clients, a lot of people do not believe that is true. I would urge the passage of S.J.R. 2 of the 74th Session.

**Assemblywoman Koivisto:**

Who would be on the commission?

**Bruce Beasley:**

There would be members of the public, members of the judiciary, and lawyers appointed by different groups. Some members would be appointed by the Governor; some would be appointed by the State Bar; and some would be appointed by the Supreme Court, much like judicial selection committees are now. They are comprised of a range of people.

**Cam Ferenbach, Vice President, State Bar of Nevada, Las Vegas, Nevada:**

I have practiced law in Clark County for 29 years. For the reasons Mr. Beasley articulated, as the state has grown, and particularly in Clark County, we face an

increased danger that an unqualified individual can successfully run for a vacant court seat; or even successfully challenge a highly qualified, fair, and efficient incumbent. The reason is that there is limited relevant information regarding candidates available to the voting public.

Senate Joint Resolution 2 of the 74th Session creates a commission on judicial performance which will provide the public with substantive, fact-based reports and recommendations on the judge who is running for retention. Of course, the bill also maintains, with significant improvements, the Commission on Judicial Selection. With a high degree of openness to the public, the Commission selects applicants that are qualified for appointment by the Governor. The selection is based on the professional and personal record of the applicant.

Based on my experience with the Clark County Bar, the State Bar, and various community efforts, I am personally confident that if this amendment is passed by you, and then eventually by the voters, the State Bar and the public will provide commission members who are willing and able to do the hard work that this system will require. If that happens, the administration of justice in our state will be very well served. There is the additional benefit that we will be moving away from a system where political donations, TV ads, and billboards can strongly influence, if not determine, the outcome of our present judicial selection process.

**Senator Raggio:**

For your record, I would like to respond to Chair Koivisto's question. On page 7 of the bill, you can read that the commission would be a permanent commission comprised of the Chief Justice or his designee. In addition, there would be four members of the Bar appointed by the Board of Governors of the State Bar of Nevada and four persons, not members of the legal profession, appointed by the Governor.

For the district court, there would be a temporary commission comprised of the members of the permanent commission. In addition, two lawyers would be added by the Board of Governors of the State Bar from that particular judicial district; plus two additional residents of that judicial district, not members of the legal profession, would be appointed by the Governor. On page 8, language sets out additional restrictions that would keep the commission as unbiased as possible.

**Chairman Mortenson:**

Are there any questions? [There was no response.] Now, we will go to those in opposition to the bill.

**Lynn Chapman, State Vice President, Nevada Families, Sparks, Nevada:**

We are opposed to this bill. I am here as one of the "little people" of the state. We do not vote for federal judges or U.S. Supreme Court judges. State judges are the closest to the people, and that is why we feel we should be able to vote for judges.

People should have the right to say who will be sitting in judgment of them. Our constitutional republic has a government that is supposed to be for and by and of the people. If we lose the right to vote for one branch of government, that does not give us the checks and balances we need.

I have a story about a Brooklyn, New York, District Attorney who was investigating a party chairman, Clarence Norman, for allegations that Norman was demanding money for candidates. In order to become a state court judge in Brooklyn, a candidate had to be selected by the chairman of this party—Chairman Norman. Then the candidates were referred to a screening panel that was appointed by Chairman Norman. They would screen the candidates and, finally, the judges were selected by judicial convention made up of friends, relatives, business partners, and employees of the party overseen by Chairman Norman. Only then were the people able to vote for a judge who would serve on the bench for 14 years.

**Chairman Mortenson:**

Ms. Chapman that is not the system we are discussing here.

**Lynn Chapman:**

I know, but I wanted to show how corruption can happen. I had a question. Do judges being retained buy mailings and billboards and such to run their retention races? Would they still have to do that?

I would also like to mention that I do know a lot about many of the judges in the area because I read the newspaper. I see how different judges have decided different cases. You can ask people who have been in court with judges how they were treated and what the judges were like. We have ways of finding out about people.

The International Association of Women Judges had a conference in May 2006. In their report, they stated that an elective system favors women and minorities who are not insiders and would never be appointed to the bench. When those outsiders are competent and talented, they can win elections. Deborah Agosti, former Chief Justice of the Nevada Supreme Court, favors election of judges,

saying that she could never have become a judge, much less a chief justice, in an appointive system.

Please, do not vote this through. I know people say that we will have a chance to vote for retention, but then I would only get to vote for someone else's choice for a judge.

**Assemblyman Hambrick:**

How do you reconcile the fact that some people and attorneys believe some judges are being bought because those with the best sound bites or those who get the most money are winning? Do you still believe the election process truly elects the best qualified individual or does the best-funded judicial candidate win?

**Lynn Chapman:**

I think that could happen in any type of election or appointment. Considering the corruption I was telling you about, it happens whether elected or appointed, so it could happen for an appointment as well. An individual could buy the office in either situation.

**Assemblyman Hambrick:**

This might be a little more subtle though.

**Assemblyman Horne:**

Do you not consider it to be ironic that you are opposed to us sending this to the people to vote on? You do not want this proposal to even be on the ballot to be considered.

**Lynn Chapman:**

We have already voted on this issue a number of times. The voters keep saying, "No." I do not know how many times we have to keep voting on it. We have always said that we want to retain the right to elect judges rather than appoint them.

**Assemblyman Horne:**

I would agree with you if the state was the same as it was before, but it is remarkably different than in the past.

**Lynn Chapman:**

I do not see it that way. I think the people should not have their rights stripped from them, and I think that is what is happening.

**Assemblyman Horne:**

Not if they are voting for it. Not if they vote for the change. Your group has always advocated allowing the people to vote for any changes. You quoted Justice Agosti, but I thought your group was opposed to her.

**Lynn Chapman:**

We were opposed to what she did. But she was Chief Justice and she was elected, not appointed.

If this goes to a vote of the people, so be it. That is fine, too, but we have already voted on this. That is my point. We have voted on it already, and we have always said that we wanted to keep the right to vote for our judges, especially the judges that are the closest to the people.

**Assemblywoman Koivisto:**

Electing judges was probably all right 50 years ago when we did not have the population we have now, but our experience with some of the judges elected to the bench in Clark County during the last two or three years has been horrendous.

**Chairman Mortenson:**

Are there any further questions for Ms. Chapman? I see none.

**Janine Hansen, President, Nevada Eagle Forum, Elko, Nevada:**

I certainly appreciate the opportunity to discuss this issue with you. This is a wonderful forum we have at the Legislature to have discussions with legislators who have been elected by the people, because you are more responsive to the concerns and the needs of those you represent.

It alarms me when I see one bill after another being considered in the Legislature which would take away the right of the people to vote. This will go on the ballot if it passes this House. We will be participating in that activity, and that is as it should be. But we all know the process begins here, so if you oppose something, you argue against it at the Legislature. The process begins here and that is why we are here.

We are happy that the retention percentage is lower, but one of the big issues with this bill is the fact that it is very hard to remove someone who is once appointed. Our national president, Phyllis Schlafly, is an attorney. She has written a book about the "imperial" federal judiciary. You can find information on that book on the national Eagle Forum website. Much of her book deals with the fact that the unelected, imperial, unaccountable federal judiciary does not

respond to the concerns of the people. So the people go unrepresented, and the things the courts do are not in accordance with what the majority of the people would like to have happen.

Of course, we all know that the courts need to also protect the rights of the minority; but oftentimes, the courts run roughshod over the sentiments of the people. One issue we saw this on was the *Guinn* decision made by our own Nevada Supreme Court. The people were smart enough to figure out what happened there. One of the justices decided not to run because of the sentiment of the people in that particular issue. Another justice was put off the bench because she had supported the *Guinn* decision. It is interesting to note that even the Supreme Court thought better of their *Guinn* decision and reversed much of it later, recognizing that it was a very egregious decision.

One of my concerns about the Commission on Judicial Selection is that it will be a closed shop. It will represent the "powers that be," which would ensure bias by those who are choosing the candidates. It would ensure bias because it would be a closed shop.

My brother Joel Hansen ran for the Supreme Court in 2004. Although he has an excellent record as an attorney and has successfully brought many issues before the Nevada Supreme Court, he would never be chosen by the Judicial Selection Commission because he is too controversial. Yet in that 2004 election, he was leading in the polls before the "powers that be" got upset and thought that he might possibly win. This is another reason I am very concerned about it, because people who are not politically correct, who may not have the same philosophy as the current chief justice or those on the Commission, would never have the opportunity to be selected in this closed circumstance.

Another issue that was brought up here that concerns me is the Commission on Judicial Performance. This sounds like a great way for all of us to find out how certain justices are performing—according to the "powers that be." It would be like a voter guide. That worries me. Will we, as the public, be paying for a voter guide from the Judicial Performance Committee or some such thing? If we were trying to oppose someone who was appointed, would we have to use our own money to oppose this particular person? Our national president of Eagle Forum, Phyllis Schlafly, lives in Missouri, the state where this plan emanated. She told me that it was almost impossible to get rid of a bad judge in that state. She mentioned they tried several times to not retain one of the judges there and failed every time. Why is that? Well, it is pretty easy to run a

campaign when you do not have a candidate running against you. You also do not have to attend candidates' nights and speak with the people.

We do not want the judiciary to be independent of the people. We want them to have to be accountable. They do not always make the right decision, just like voters do not always make the right decision about who is elected to the state Legislature, or to the county commission, or to some other office, but usually in the long run, when someone bad is elected, the people finally figure it out and it changes. So in the long run, I have far more faith in the understanding and the will of the people than I have in the closed shop, in the special interest, and in the "powers that be" who will be making all the decisions and denying the rights of the people. It will make the judiciary independent of the people.

**Chairman Mortenson:**

Are there questions for Ms. Hansen from the Committee? I see none.

**Nanette Moffet, Private Citizen, Carson City, Nevada:**

I am representing myself. I remember several years ago when this idea came up, Mills Lane and Ralph Crow were the only two attorneys who testified against it. Ralph Crow practiced law in Missouri for about 20 years and then for a number of years in Nevada. Mr. Crow testified that what you are proposing is called the "Missouri plan." He testified that if the people of Missouri were given another opportunity to vote again on the Missouri plan, they would immediately abolish it.

Janine Hansen and Lynn Chapman covered most of the points I was going to make, except that I can empathize with the lawyers. I know they are under a lot of pressure when it comes to donating to campaigns, so why not eliminate any member of the bar from contributing to a campaign?

I do not know how many of you watch Fox News, but the O'Reilly Factor has done extensive research on judges who made horrific decisions. One that sticks in my mind was a child abuser who had abused a little boy for seven years. The judge gave him 60 days probation and no prison time. The judge could not be removed from office. When you take the power out of the hands of the people, you give too much power to a committee, a person, the appointee in power. Absolute power corrupts, and there is no way to get around that.

If this were going to be put before the people, perhaps you could add an amendment that "none of the above" be put on the ballot. If "none of the above" won, then it would go to a vote of the people and it would be by

popular vote. I remember an election many years ago in which the usual one name appeared on the ballot for Supreme Court Justice. "None of the above" won more votes, but there was no recourse if none of the above won. There again, there was no competition. I am sure lawyers do not want to run against a Supreme Court Justice; it is rather intimidating. They may have to come up before that justice in court. Face it; everyone is human, and there could be a revenge factor and I am sure that thought goes through the minds of the attorneys.

I can see the problem they have. They are constantly solicited for campaign donations. You could eliminate the ability of any member of the bar to contribute to a campaign.

**Assemblyman Horne:**

Ms. Moffett, we could not do that because of First Amendment, free speech issues. You cannot preclude a member of the bar from contributing to a political campaign.

**Nanette Moffett:**

That crossed my mind, too, but there is no way to protect lawyers. I know the pressure they are under.

**Assemblywoman Gansert:**

I was thinking that judges could be removed by the Judicial Disciplinary Commission. You had mentioned that a judge could not be removed if there was a problem, but we still have that option with this plan.

**Nanette Moffett:**

But it is made up of attorneys.

**Chairman Mortenson:**

Are there further questions for Ms. Moffett? I see none. This concludes the people who have signed up. Is there anyone else who wishes to speak on this? If not, we will close the hearing on S.J.R. 2 of the 74th Session.

We will open the hearing on Senate Joint Resolution 1 (1st Reprint).

TESTIMONY OF  
SENATOR WILLIAM RAGGIO

ASSEMBLY ELECTIONS, PROCEDURES, ETHICS,  
AND CONSTITUTIONAL AMENDMENTS  
APRIL 30, 2009

SENATE JOINT RESOLUTION NO. 2, WHICH WAS APPROVED BY THE 2007 SESSION, PROPOSES TO AMEND THE NEVADA CONSTITUTION TO PROVIDE FOR THE INITIAL APPOINTMENT BY THE GOVERNOR OF JUSTICES OF THE SUPREME COURT AND JUDGES OF THE DISTRICT COURT. AFTER THE INITIAL APPOINTMENT, IF A JUSTICE OR JUDGE WISHES TO SERVE ANOTHER TERM, HE OR SHE MUST MAKE A DECLARATION OF CANDIDACY FOR A RETENTION ELECTION. IF 55 PERCENT OR MORE OF THE VOTES CAST ARE IN FAVOR OF THE RETENTION OF THE JUSTICE OR JUDGE, HE OR SHE WILL THEN SERVE A 6 YEAR TERM AND MUST RUN IN A RETENTION ELECTION IF ANOTHER 6 YEAR TERM IS DESIRED. IF THE JUSTICE OR JUDGE DOES NOT MAKE A DECLARATION OF CANDIDACY FOR A RETENTION ELECTION OR IF LESS THAN 55 PERCENT OF THE VOTES CAST ARE IN FAVOR OF RETENTION, A VACANCY IS CREATED AT THE END OF THE TERM WHICH MUST BE FILLED BY APPOINTMENT BY THE GOVERNOR.

SJR 2 ALSO REQUIRES EACH JUSTICE OR JUDGE WHO HAS MADE A DECLARATION OF CANDIDACY FOR A RETENTION ELECTION TO UNDERGO A REVIEW OF HIS OR HER PERFORMANCE AS A JUSTICE OR JUDGE. THIS RESOLUTION CREATES THE COMMISSION ON JUDICIAL PERFORMANCE AND REQUIRES THE COMMISSION TO PERFORM THESE REVIEWS. THE REVIEW OF EACH JUSTICE OR JUDGE IS REQUIRED TO CONSIST OF A REVIEW OF THE RECORD OF THE JUSTICE OR JUDGE AND AT LEAST ONE INTERVIEW OF THE JUSTICE OR JUDGE. AT THE CONCLUSION OF THIS REVIEW, THE COMMISSION IS REQUIRED TO PREPARE AND RELEASE TO THE PUBLIC A REPORT CONTAINING INFORMATION ABOUT THE REVIEW AND A RECOMMENDATION ON THE QUESTION OF WHETHER THE JUSTICE OR JUDGE SHOULD BE RETAINED.

I AND THE OTHER SPONSORS HAVE PROPOSED THIS AMENDMENT OF THE CONSTITUTION BECAUSE TOO OFTEN JUDICIAL ELECTIONS BECOME EMBROILED IN POLITICS. THIS APPOINTMENT SYSTEM WITH RETENTION ELECTIONS WOULD IN LARGE MEASURE REMOVE JUDGES FROM PARTISAN POLITICS AND WOULD FREE JUDGES FROM THE NECESSITY OF SOLICITING POLITICAL CONTRIBUTIONS FROM ATTORNEYS, LAW FIRMS, LITIGANTS AND POTENTIAL LITIGANTS (THE USUAL SOURCE OF FINANCIAL CONTRIBUTIONS IN JUDICIAL ELECTIONS).

THE DISTRICT OF COLUMBIA AND TWENTY THREE STATES, WHICH ARE AMONG THE MOST PROGRESSIVE IN JUDICIAL REFORM, HAVE ADOPTED A NOMINATING COMMISSION PLAN FOR APPOINTING JUDGES TO AN INITIAL TERM ON THE BENCH. FIFTEEN OF THESE STATES ALSO HOLD RETENTION ELECTIONS AT THE EXPIRATION OF JUDGES' TERMS. THE PEOPLE OF NEVADA HAVE ALREADY APPROVED AN AMENDMENT OF OUR CONSTITUTION WHICH PROVIDES FOR A JUDICIAL SELECTION COMMISSION TO MAKE RECOMMENDATIONS FOR FILLING VACANCIES AT THE SUPREME COURT AND DISTRICT COURT LEVEL. IT IS A SIMILAR COMMISSION, ONE PERMANENT AND ONE TEMPORARY, THAT IS PROPOSED TO MAKE NOMINATIONS FOR THE INITIAL APPOINTMENTS BY THE GOVERNOR.

SJR 2 CONTAINS THE BEST FEATURES OF ALL OF THE MERIT SELECTION PLANS. SIMILAR PROPOSALS HAVE BEEN BEFORE THIS BODY AND THE ELECTORATE IN PAST YEARS, BUT WERE UNSUCCESSFUL. THE EVENTS WHICH HAVE OCCURRED SINCE THESE MEASURES WERE CONSIDERED FULLY JUSTIFY THAT THIS ISSUE BE ONCE AGAIN SUBMITTED TO THE PEOPLE OF THIS STATE FOR FURTHER CONSIDERATION.

SJR 2 IS INTENDED TO ENSURE INsofar AS POSSIBLE AN INDEPENDENT JUDICIARY. IT WILL ALSO ENABLE A JUDGE TO DEVOTE HIS OR HER ENTIRE TIME TO THE BUSINESS OF THE COURT SINCE THE JUDGE WILL NOT HAVE TO TAKE PART IN THE USUAL POLITICAL CAMPAIGNS. THE PLAN ENSURES THAT FULL CONSIDERATION WILL BE GIVEN TO THE ABILITY, CHARACTER AND QUALIFICATIONS OF A JUDICIAL CANDIDATE BEFORE THAT PERSON'S NAME IS PERMITTED TO GO ON THE BALLOT AND WILL CAUSE THE ATTENTION OF VOTERS TO BE FOCUSED ON A JUDGE'S RECORD, MAKING IT EASIER TO REMOVE INCOMPETENT JUDGES FROM OFFICE AND TO RETAIN JUDGES WHOSE RECORDS ARE MERITORIOUS.

SJR 2 WILL ENCOURAGE WELL-QUALIFIED PEOPLE TO SERVE ON THE BENCH WHO WOULD NOT OTHERWISE SUBMIT THEMSELVES TO THE ORDEAL OF CAMPAIGNING FOR OFFICE UNDER THE EXISTING POLITICAL SYSTEM OR WHO LACK THE MEANS OF FINANCING SUCH A CAMPAIGN. I BELIEVE IT IS TIME TO GIVE THE PEOPLE OF THIS STATE AN OPPORTUNITY TO ENSURE AN INDEPENDENT JUDICIARY IN THIS STATE AND TO AT THE VERY LEAST SUBMIT IT TO THE VOTERS FOR APPROVAL ON DISAPPROVAL.

I BELIEVE THAT THERE IS CONSIDERABLY MORE SUPPORT FOR THIS CONCEPT THAN EVER BEFORE. IN PAST EFFORTS THERE HAS BEEN ALMOST COMPLETE OPPOSITION FROM THE PRINT AND ELECTRONIC MEDIA TO ANY DEPARTURE FROM THE PRESENT ELECTION PROCESS,

**BUT THIS HAS CHANGED TO SOME EXTENT. FAVORABLE ARTICLES AND EDITORIALS IN SUPPORT OF SJR2 APPEARED IN BOTH THE RENO GAZETTE JOURNAL AND THE LAS VEGAS SUN AND IN SOME T.V. EDITORIAL TYPE COMMENTS.**

**THIS WAS PRECEDED BY AN ARRAY OF NEGATIVE MEDIA REPORTS WHICH WERE HIGHLY CRITICAL OF JUDICIAL PERFORMANCE, AND THE PERCEIVED NEXUS TO CAMPAIGN CONTRIBUTIONS AND PRACTICES. NOTABLY AMONG THESE WERE THE SERIES OF ARTICLES WHICH RAN IN THE LOS ANGELES TIMES IN JUNE OF 2006 PORTRAYING A "STACKED JUDICIARY" IN LAS VEGAS. IN ADDITION THERE HAVE BEEN A NUMBER OF INCIDENTS ALSO WITHIN OUR OWN STATE WHERE ACTIONS OF A JUDICIAL OFFICER HAVE BEEN QUESTIONABLE OR UNETHICAL THAT MAY HAVE HELPED TO ERODE THE PUBLIC'S CONFIDENCE IN OUR JUDICIAL SYSTEM.**

**I PERCEIVE THAT MORE AND MORE LAWYER GROUPS ARE SUPPORTIVE OF THE CONCEPT CONTAINED IN SJR2. THE STATE BAR OF NEVADA HAS GONE ON RECORD SUPPORTING THIS CONCEPT AS HAVE AN INCREASING NUMBER OF LAW FIRMS AND INDIVIDUAL LAWYERS.**

**WHILE NOT ALWAYS TRUE, OF COURSE, IN MY OPINION JUDGES THAT HAVE COME THROUGH THE SELECTION PROCESS HAVE BEEN BETTER QUALIFIED THAN THOSE WHO ARE INITIALLY ELECTED.**

**I HAVE PERUSED THE MATERIALS OFFERED BY THE "JUSTICE AT STAKE" CAMPAIGN. ITS FINDINGS ARE VERY PERSUASIVE. THE AMOUNT OF MONEY SPENT ON CONTESTED JUDICIAL ELECTIONS IS STAGGERING, BUT ONE THING IS CLEAR: RETENTION RACES REQUIRE AND ATTRACT THE LEAST AMOUNT OF MONEY.**

**AND 76% OF VOTERS BELIEVE THAT CAMPAIGN CONTRIBUTIONS HAVE AT LEAST SOME INFLUENCE ON JUDGE'S DECISIONS. EVEN 26% OF STATE JUDGES AGREE.**

**THIS IS REGRETABLE AND UNACCEPTABLE. THIS COUNTRY WAS FOUNDED ON THE CONCEPT OF A FAIR AND IMPARTIAL JUDICIARY. WE NEED TO DO EVERYTHING POSSIBLE TO RESTORE THAT CONCEPT. SJR2 WILL NOT DO THAT ALONE BUT IT IS A STEP IN THE RIGHT DIRECTION.**

**THERE IS NO QUESTION THAT AMERICANS WANT COURTS TO BE ACCOUNTABLE - TO THE LAW, NOT SPECIAL INTERESTS AND PARTISAN TYPE POLITICS. COURTS DERIVE THEIR LEGITEMACY**

**FROM THEIR NEUTRALITY AND INDEPENDENCE AND THIS IS BEING ERODED UNDER OUR PRESENT SYSTEM.**

**I'M QUOTING NOW FROM AN ARTICLE WRITTEN BY ONE DOROTHY SAMUELS, A MEMBER OF THE EDITORIAL BOARD OF THE NEW YORK TIMES, WHICH APPEARED IN THAT PUBLICATION IN DECEMBER 2006.**

**“JUSTICE, THE SAYING GOES, IS BLIND – SYMBOLIZED IN COURT HOUSES ACROSS THE COUNTRY BY STATUES OF LADY JUSTICE, BLINDFOLDED SO SHE CAN RULE WITHOUT FEAR OR FAVOR: BUT INCREASINGLY, THERE IS ONE THING JUSTICE IN AMERICA CAN SEE QUITE CLEARLY – WHO IS GIVING HER MONEY”. “A MODERN RENDITION OF LADY JUSTICE WOULD SHOW HER WITH ONE ARM EXTENDED, REACHING FOR LARGE CAMPAIGN CONTRIBUTIONS. THOSE CONTRIBUTIONS – FROM INSURANCE COMPANIES, BIG BUSINESS, TOBACCO COMPANIES, THE BUILDING AND HEALTH CARE INDUSTRIES, UNIONS, TRIAL LAWYERS, THE RELIGIOUS RIGHT, ENVIROMENTAL GROUPS AND OTHER SPECIAL INTERESTS – DO MORE THAN CREATE A BAD APPEARANCE. THEY SEEM TO BE HAVING AN EFFECT ON THE DECISIONS COURTS ARE MAKING”.**

**SHE ALSO NOTED THAT FORMER JUSTICE SANDRA DAY O'CONNOR, A FERVENT CRUSADER IN HER RETIREMENT FOR PRESERVING JUDICIAL INDEPENDENCE, HAS LATELY EXPRESSED REGRET ABOUT HER DECIDING VOTE IN THE WHITE CASE. JUSTICE O'CONNOR DEVOTED MOST OF HER CONCURRING OPINION TO DETAILING HER LONGTIME OPPOSITION TO JUDICIAL ELECTIONS AND SUPPORT FOR MERIT APPOINTMENT OF JUDGES BUT ULTIMATELY CONCLUDED THAT IF STATES PERSIST IN HAVING JUDICIAL ELECTIONS; CANDIDATES MUST BE ALLOWED TO HAVE THEIR FULL THROATED SAY.**

**UNFORTUNATELY THE PRESENT SYSTEM FOSTERS THE BELIEF THAT COURTS AND JUDGES ARE NOT ACCOUNTABLE, ARE NOT IN ALL CASES FOLLOWING THE LAW AND THIS RESULTS IN EFFORTS LIKE THE J.A.I.L. FOR JUDGES INITIATIVE IN SOUTH DAKOTA.**

**FOR ALL OF THESE REASONS I HAVE ONCE AGAIN PROPOSED A NEW AND IMPROVED VERSION OF MERIT SELECTION; SJR2.**

**I HAVE SEEN SO MANY JUDGES SITTING IN A WAITING ROOM OF A LAW FIRM OR OF A POTENTIAL LITIGANT SEEKING CAMPAIGN CONTRIBUTIONS. I THINK IT IS DEMEANING AND DEGRADING. HERE'S A QUOTE FROM OHIO SUPREME COURT JUSTICE PAUL E. PFEIFFER.**

**"I NEVER FELT SO MUCH LIKE A HOOKER DOWN BY THE BUS STATION IN ANY RACE I'VE EVER BEEN IN AS I DID IN A JUDICIAL RACE. EVERYONE INTERESTED IN CONTRIBUTING HAS VERY SPECIFIC INTERSTS. THEY MEAN TO BE BUYING A VOTE. WHETHER THEY SUCCEED OR NOT, IT'S HARD TO SAY".**

**FINALLY, FOR THOSE WHO SAY WE ARE TAKING AWAY THE RIGHT TO VOTE, THIS MEASURE DOES NOTHING OF THE KIND. IT PROVIDES FOR THE PUBLIC TO VOTE ON RETENTION OF A JUDGE'S OR JUSTICE BUT ON THE BASIS OF A COMPETENT REVIEW OF THE JUDGES PERFORMANCE AND A RECOMMENDATION FROM A COMMISSION WHICH IS STRUCTURED TO WEED OUT INCOMPETENCE.**

**WHETHER OR NOT YOU FULLY AGREE, I WOULD URGE YOU TO PASS THIS DURING THIS LEGISLATIVE SESSION AND GIVE THE PUBLIC THE OPPORTUNITY TO DETERMINE IF THIS PROCESS SHOULD BE NOW UTILIZED TO APPOINT OUR DISTRICT AND SUPREME COURT JUDICIARY.**



# Judicial Selection in the States

## Appellate and General Jurisdiction Courts

### “Initial Selection, Retention, and Term Length”

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>Alabama</b>						
Supreme Court			X		6	Re-election (6 year term)
Court of Civil App.			X		6	Re-election (6 year term)
Court of Criminal App.			X		6	Re-election (6 year term)
Circuit Court			X		6	Re-election (6 year term)
<b>ALASKA</b>						
Supreme Court	X				3	Retention election (10 year term) <sup>1</sup>
Court of Appeals	X				3	Retention election (8 year term)
Superior Court	X				3	Retention election (6 year term)
<b>ARIZONA</b>						
Supreme Court	X				2	Retention election (6 year term)
Court of Appeals	X				2	Retention election (6 year term)
Superior Court (county pop. greater than 250,000)	X				2	Retention election (4 year term)
Superior Court (county pop. less than 250,000)			X		4	Re-election (4 year term)
<b>ARKANSAS<sup>2</sup></b>						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
<b>CALIFORNIA</b>						
Supreme Court		X(G)			12	Retention election (12 year term)
Courts of Appeal		X(G)			12	Retention election (12 year term)
Superior Court <sup>3</sup>			X		6	Nonpartisan election (6 year term) <sup>4</sup>

1. In a retention election judges run unopposed on the basis of their record.

2. In November 2000, Arkansas voters passed an amendment to the Arkansas constitution shifting judicial elections to a nonpartisan system.

3. The California constitution provides that local electors may choose gubernatorial appointments instead of nonpartisan election to select superior court judges. To date, no counties have chosen gubernatorial appointments.

4. If the election is uncontested, the incumbent's name does not appear on the ballot.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>COLORADO</b>						
Supreme Court	X				2	Retention election (10 year term)
Court of Appeals	X				2	Retention election (8 year term)
District Court	X				2	Retention election (6 year term)
<b>CONNECTICUT</b>						
Supreme Court	X				8	Commission reviews incumbent's performance on noncompetitive basis; governor renominates and legislature confirms
Appellate Court	X				8	Same
Superior Court	X				8	Same
<b>DELAWARE<sup>5</sup></b>						
Supreme Court	X				12	See Footnote 6
Court of Chancery	X				12	See Footnote 6
Superior Court	X				12	See Footnote 6
<b>DISTRICT OF COLUMBIA</b>						
Court of Appeals	X				15	Reappointment by judicial tenure commission <sup>7</sup>
Superior Court	X				15	Reappointment by judicial tenure commission <sup>7</sup>
<b>FLORIDA</b>						
Supreme Court	X				1	Retention election (6 year term)
District Court of Appeal	X				1	Retention election (6 year term)
Circuit Court			X		6	Re-election for additional terms
<b>GEORGIA</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Superior Court			X		4	Re-election for additional terms
<b>HAWAII</b>						
Supreme Court	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)
Intermediate Court of Appeals	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)
Circuit Court and Family Court	X				10	Reappointed to subsequent term by the Judicial Selection Commission (10 year term)

5. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

6. Incumbent reapplies to nominating commission and competes with other applicants for nomination by the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.

7. Initial appointment is made by the President of the United States and confirmed by the Senate. Six months prior to the expiration of the term of office, the judge's performance is reviewed by the tenure commission. Those found "Well Qualified" are automatically reappointed. If a judge is found to be "Qualified" the President may nominate the judge for an additional term (subject to Senate confirmation). If the President does not wish to reappoint the judge, the District of Columbia Nomination Commission compiles a new list of candidates.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>IDAHO</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
District Court			X		4	Re-election for additional terms
<b>ILLINOIS</b>						
Supreme Court				X	10	Retention election (10 year term)
Appellate Court				X	10	Retention election (10 year term)
Circuit Court				X	6	Retention election (6 year term)
<b>INDIANA</b>						
Supreme Court	X				2	Retention election (10 year term)
Court of Appeals	X				2	Retention election (10 year term)
Circuit Court				X	6	Re-election for additional terms
Circuit Court (Vanderburgh County)			X		6	Re-election for additional terms
Superior Court				X	6	Re-election for additional terms
Superior Court (Allen County)			X		6	Re-election for additional terms
Superior Court (Lake County)	X <sup>8</sup>				2	Retention election (6 year term)
Superior Court (St. Joseph County)	X				2	Retention election (6 year term)
Superior Court (Vanderburgh County)			X		6	Re-election for additional terms
<b>IOWA</b>						
Supreme Court	X				1	Retention election (8 year term)
Court of Appeals	X				1	Retention election (6 year term)
District Court	X				1	Retention election (6 year term)
<b>KANSAS</b>						
Supreme Court	X				1	Retention election (6 year term)
Court of Appeals	X				1	Retention election (4 year term)
District Court (seventeen districts)	X				1	Retention election (4 year term)
District Court (fourteen districts)				X	4	Re-election for additional terms
<b>KENTUCKY</b>						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Circuit Court			X		8	Re-election for additional terms
<b>LOUISIANA</b>						
Supreme Court				X <sup>9</sup>	10	Re-election for additional terms
Court of Appeals				X <sup>9</sup>	10	Re-election for additional terms
District Court				X <sup>9</sup>	6	Re-election for additional terms

8. Three of the judges run in partisan elections for 6 year terms then have to be re-elected for additional terms.

9. Louisiana judicial elections are partisan inasmuch as the candidates' party affiliations appear on the ballot. However, two factors lead a somewhat nonpartisan character to these elections: (1) primaries are open to all candidates; and (2) judicial candidates generally do not solicit party support for their campaigns.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>MAINE</b>						
Supreme Judicial Court		X(G)			7	Reappointment by governor, subject to legislative confirmation
Superior Court		X(G)			7	Reappointment by governor, subject to legislative confirmation
<b>MARYLAND<sup>10</sup></b>						
Court of Appeals	X				See fn 11	Retention election (10 year term)
Court of Special Appeals	X				See fn 11	Retention election (10 year term)
Circuit Court	X				See fn 11	Nonpartisan election (15 year term) <sup>12</sup>
<b>MASSACHUSETTS<sup>13</sup></b>						
Supreme Judicial Court	X				to age 70	
Appeals Court	X				to age 70	
Trial Court of Mass.	X				to age 70	
<b>MICHIGAN</b>						
Supreme Court				X <sup>14</sup>	8	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
<b>MINNESOTA</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
District Court			X		6	Re-election for additional terms
<b>MISSISSIPPI</b>						
Supreme Court			X		8	Re-election for additional terms
Court of Appeals			X		8	Re-election for additional terms
Chancery Court			X		4	Re-election for additional terms
Circuit Court			X		4	Re-election for additional terms
<b>MISSOURI</b>						
Supreme Court	X				1	Retention election (12 year term)
Court of Appeals	X				1	Retention election (12 year term)
Circuit Court				X	6	Re-election for additional terms
Circuit Court (Jackson, Clay, Platte, Saint Louis Counties)	X				1	Retention election (6 year term)
<b>MONTANA</b>						
Supreme Court			X		8	Re-election; unopposed judges run for retention
District Court			X		6	Re-election; unopposed judges run for retention
<b>NEBRASKA</b>						
Supreme Court	X				3	Retention election (6 year term)
Court of Appeals	X				3	Retention election (6 year term)
District Court	X				3	Retention election (6 year term)

10. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

11. Until the first general election following the expiration of one year from the date of the occurrence of the vacancy.

12. May be challenged by other candidates.

13. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

14. Although party affiliations for Supreme Court candidates are not listed on the general election ballot, candidates are nominated at party conventions.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>NEVADA</b>						
Supreme Court			X		6	Re-election for additional terms
District Court			X		6	Re-election for additional terms
<b>NEW HAMPSHIRE<sup>15</sup></b>						
Supreme Court		X(G) <sup>16</sup>			to age 70	
Superior Court		X(G) <sup>16</sup>			to age 70	
<b>NEW JERSEY</b>						
Supreme Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
Appellate Division of Superior Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
Superior Court		X(G)			7	Reappointment by governor (to age 70) with advice and consent of the Senate
<b>NEW MEXICO</b>						
Supreme Court	X				until next general election	See Footnote 7
Court of Appeals	X				until next general election	See Footnote 7
District Court	X				until next general election	See Footnote 7
<b>NEW YORK</b>						
Court of Appeals	X				14	See Footnote 8
Appellate Division of the Supreme Court	X				5	Commission reviews and recommends for or against reappointment by governor
Supreme Court				X	14	Re-election for additional terms
County Court				X	10	Re-election for additional terms
<b>NORTH CAROLINA</b>						
Supreme Court			X <sup>19</sup>		8	Re-election for additional terms
Court of Appeals			X <sup>19</sup>		8	Re-election for additional terms
Superior Court			X		8	Re-election for additional terms
<b>NORTH DAKOTA</b>						
Supreme Court			X		10	Re-election for additional terms
District Court			X		6	Re-election for additional terms

15. Merit selection established by executive order in Delaware, Maryland, and Massachusetts. In all other jurisdictions merit selection established by constitutional or statutory provision.

16. The governor's nomination is subject to the approval of a five-member executive council.

17. Partisan election at next general election after appointment for eight-year term for appellate judges, six-year term for district. The winner thereafter runs in a retention election for subsequent terms.

18. Incumbent reapplies to nominating commission and competes with other applicants for nomination to the governor. The governor may reappoint the incumbent or another nominee. The senate confirms the appointment.

19. Beginning in 2004, these elections will be nonpartisan.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>OHIO</b>						
Supreme Court				X <sup>20</sup>	6	Re-election for additional terms
Court of Appeals				X <sup>20</sup>	6	Re-election for additional terms
Court of Common Pleas				X <sup>20</sup>	6	Re-election for additional terms
<b>OKLAHOMA</b>						
Supreme Court	X				1	Retention election (6 year term)
Court of Criminal Appeals	X				1	Retention election (6 year term)
Court of Appeals	X				1	Retention election (6 year term)
District Court			X		4	Re-election for additional terms
<b>OREGON</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
Tax Court			X		6	Re-election for additional terms
<b>PENNSYLVANIA</b>						
Supreme Court				X	10	Retention election (10 year term)
Superior Court				X	10	Retention election (10 year term)
Commonwealth Court				X	10	Retention election (10 year term)
Court of Common Pleas				X	10	Retention election (10 year term)
<b>RHODE ISLAND</b>						
Supreme Court	X				Life	
Superior Court	X				Life	
Worker's Compensation Court	X				Life	
<b>SOUTH CAROLINA</b>						
Supreme Court		X (L) <sup>21</sup>			10	Reappointment by legislature
Court of Appeals		X (L) <sup>21</sup>			6	Reappointment by legislature
Circuit Court		X (L) <sup>21</sup>			6	Reappointment by legislature
<b>SOUTH DAKOTA</b>						
Supreme Court	X				3	Retention election (8 year term)
Circuit Court			X		8	Re-election for additional terms

20. Although party affiliations for judicial candidates are not listed on the general election ballot, candidates are nominated in partisan primary elections.

21. South Carolina has a 10 member Judicial Merit Selection Commission that screens judicial candidates and reports the findings to the state's General Assembly. Since 1997, the Assembly is restricted to voting only on those candidates found qualified by the Judicial Merit Selection Commission. However, the nominating commission itself is not far removed from the ultimate appointing body, and cannot be considered to be nonpartisan as control over member nominations is vested in majority party leadership. Although most nominating commissions contain members appointed by the governor or legislature, no other commissions actually contain the governor or current legislators who have final approval over the candidate as voting members of the commission. In contrast, the Judicial Merit Selection Commission in South Carolina contains 6 current members of the General Assembly appointed by the Speaker of the House of Representatives, the Chairman of the Senate Judiciary Committee, and the President Pro Tempore of the Senate. State legislators also choose the remaining 4 members of the Commission who are selected from the general public.

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>TENNESSEE</b>						
Supreme Court	X				until next biennial general election	Retention election (8 year term)
Court of Appeals	X				until next biennial general election	Retention election (8 year term)
Court of Criminal Appeals	X				until next biennial general election	Retention election (8 year term)
Chancery Court				X	8	Re-election for additional terms
Criminal Court				X	8	Re-election for additional terms
Circuit Court				X	8	Re-election for additional terms
<b>TEXAS</b>						
Supreme Court				X	6	Re-election for additional terms
Court of Criminal Appeals				X	6	Re-election for additional terms
Court of Appeals				X	6	Re-election for additional terms
District Court				X	4	Re-election for additional terms
<b>UTAH</b>						
Supreme Court	X				First general election	Retention election (10 year term)
Court of Appeals	X					Retention election (6 year term)
District Court	X					Retention election (6 year term)
Juvenile Court	X				3 years after appointment	Retention election (6 year term)
<b>VERMONT</b>						
Supreme Court	X				6	Retained by vote of General Assembly (6 year term)
Superior Court	X				6	Retained by vote of General Assembly (6 year term)
District Court	X				6	Retained by vote of General Assembly (6 year term)
<b>VIRGINIA</b>						
Supreme Court		X(L)			12	Reappointment by legislature
Court of Appeals		X(L)			8	Reappointment by legislature
Circuit Court		X(L)			8	Reappointment by legislature
<b>WASHINGTON</b>						
Supreme Court			X		6	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Superior Court			X		4	Re-election for additional terms
<b>WEST VIRGINIA</b>						
Supreme Court				X	12	Re-election for additional terms
Circuit Court				X	8	Re-election for additional terms

State and Court	APPOINTIVE SYSTEMS		ELECTIVE SYSTEMS		INITIAL TERM OF OFFICE (YEARS)	METHOD OF RETENTION
	Merit Selection through Nominating Commission	Gubernatorial (G) or Legislative (L) Appointment without Nominating Commission	Non-Partisan Election	Partisan Election		
<b>WISCONSIN</b>						
Supreme Court			X		10	Re-election for additional terms
Court of Appeals			X		6	Re-election for additional terms
Circuit Court			X		6	Re-election for additional terms
<b>WYOMING</b>						
Supreme Court	X				1	Retention election (8 year term)
District Court	X				1	Retention election (6 year term)

**Selection through Nominating Commission  
for Supreme Court**

1. Alaska	Retention Election (10 years)
2. Arizona	Retention Election (6 years)
3. Colorado	Retention Election (10 years)
4. Connecticut	
5. Delaware	
6. District of Columbia	
7. Florida	Retention Election (6 years)
8. Hawaii	
9. Indiana	Retention Election (10 years)
10. Iowa	Retention Election (8 years)
11. Kansas	Retention Election (6 years)
12. Maryland	Retention Election (10 years)
13. Massachusetts	
14. Missouri	Retention Election (12 years)
15. Nebraska	Retention Election (6 years)
16. New Mexico	
17. New York	
18. Oklahoma	Retention Election (6 years)
19. Rhode Island	
20. South Dakota	Retention Election (8 years)
21. Tennessee	Retention Election (8 years)
22. Utah	Retention Election (10 years)
23. Vermont	
24. Wyoming	Retention Election (8 years)



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Today: June 11, 2006 at 7:34:2 PDT

## Jon Ralston outlines the need for Nevada judges to be appointed

In the space of three days and a few thousand words, the Los Angeles Times has pulled back the sheen that civic leaders have spent years earnestly putting over Las Vegas, removing the beautiful illusion of a glistening, evolving city and replacing it with the ugly reality of an incestuous, corrupt backwater.

The newspaper's investigative series - "Juice vs. Justice" - is the product of years of research and interviews, replete with telling vignettes and documentary evidence of how relationships and money pollute the valley's judicial system.

Las Vegas, in the words of the series, is a "juice town," which may generate Louis Renault-like sarcastic exclamations but still reinforces an image of the city and state as a Third World country, ruled by sin and sordid behavior, unfit for inclusion in respectable society.

Like many others who call Southern Nevada home, I recoil at the prospect of the snickering that the story will generate across the country, where any attempt to be taken seriously will be impaired and where ne'er do wells who didn't do well here will leap to rationalize their lack of success because of the soiled system. But unlike many others, I won't insist the story is exaggerated, twisted, distorted.

For I come here not to bury Las Vegas nor to praise its honest lawyers and judges. I come to exploit this unfortunate expose to once again make the case for reform of the one of the three branches of government that can least afford to be tarnished by allegations of influence-buying.

You cannot take the money out of elective politics for the executive and legislative branches. But for the judicial branch, where those in robes frequently must rule on the actions of the other two, the process must be

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purified - or a reasonable facsimile thereof.

And such a method exists and has been pushed for years by myself and many others, especially judges, lawyers and politicians such as state Senate Majority Leader Bill Raggio. It is called the Missouri Plan, or some variant, whereby judges are appointed rather than elected.

This makes sense for so many reasons and would erase any pay-to-play arrangement that, so the Times alleges, exists now in the court system. By erecting a proper vetting mechanism, you could be better assured of getting qualified jurists with integrity on the bench as opposed to campaigns in which who has the biggest war chest and best-connected consultants often wins.

What's more, voters know little about judges unless they have appeared in his or her court, as opposed to what they might know of legislators or local elected officials who cast myriad votes that affect people's lives.

There are real pitfalls in enacting an appointive system. The most obvious is that you create a smaller universe of possible judges and perhaps create a greater of two evils - an even juicier system whereby those doing the appointing salivate over the chance to pay back their cronies and, alas, campaign contributors.

Others say that a Missouri Plan would reduce the ability of minorities and women to gain appointment because of the inevitable cronyism. But I see it differently: Those making the appointments would be ultra-sensitive to the less juiced because they do have to face voters.

The most salient problem in enacting a Missouri Plan or a modified alternative, though, is that critics have such a compelling, albeit political counter-argument: Don't let the powers that be take power away from the people.

The late Mike O'Callaghan, the former governor and Sun executive editor, used to argue with me about my position, brandishing the voters-should-have-their-say club. His position was at least principled, as opposed to the state's most influential media outlet, the Las Vegas Review-Journal, which flip-flopped on a Missouri Plan ballot question almost 20 years ago and whose "paper of record" version of reporting on the legal system is to send out surveys to lawyers and ask them to be unbiased judges of judges - and anonymously to boot.

If the L.A. Times series can reawaken the debate over taking judges off the ballot, maybe it can, ironically, be a catalyst for evolution from small-town backwater to big city.

*Jon Ralston hosts the news discussion program "Face to Face With Jon Ralston" on Las Vegas ONE and also publishes the daily e-mail newsletter "RalstonFlash.com." His column for the Las Vegas Sun appears Sunday, Wednesday and Friday. Ralston can be reached at 870-7997 or through e-mail at [ralston@vegas.com](mailto:ralston@vegas.com).*

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March 20, 2007

## Taking cash power out of the judiciary

### Court reformers want judges to be appointed, at least in the beginning

By **Sam Skolnik**  
 Las Vegas Sun

Nevada court reform advocates concerned by the growing influence of money in state judicial elections have always banked on proposals such as the so-called "Missouri Plan" and "Nevada Plan" to try to fix the problem.

Those efforts hit brick walls in the form of voters reluctant to give up their Nevada constitutional right to choose their own District Court judges and Supreme Court justices.

But now, a wide and bipartisan array of would-be reformers - from judges and lawyers' groups to academics and veteran legislators - is excitedly touting Senate Joint Resolution 2, their newest, and they say most inclusive effort to change the system.

#### Meet the Raggio Plan.

The measure, sponsored by Senate Majority Leader Bill Raggio, R-Reno, and currently before the Senate Judiciary Committee, is similar in several ways to the Missouri Plan.

## CURRENT PLAN

Nevada District Court judges and Supreme Court justices are elected every six years in nonpartisan, open elections. A bill recently proposed by Sen. Bill Raggio, R-Reno, would dramatically change the way District Court judges and Supreme Court justices are selected. The bill, currently before the Senate Judiciary Committee, has garnered strong bipartisan support. Following are the differences between the current law, two other plans for change that have been floated in the past and Raggio's proposal:

## MISSOURI PLAN

The state's Judicial Selection Commission would select three candidates for open seats, and the governor would



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The bill would mandate that the state's Judicial Selection Commission choose the names of three candidates for vacant District and Supreme Court seats, and then pass those names on to the governor, who would make the appointment.

After an initial term of one to two years, the judge would run in a "retention election," in which the only choice would be whether to keep or dump the judge. If retained, the judge would serve a six-year term.

Raggio's bill differs from the Missouri Plan in that the candidate would need 60 percent of the vote to be retained. Perhaps more importantly, his bill also would create the Judicial Performance Commission, which would review the judge's record and issue a public report before the election that would include a recommendation on whether the judge should be retained.

The Raggio Plan would differ greatly from the current system of nonpartisan, contested elections.

Change is necessary, proponents say, because judicial races too often have become "embroiled by politics," as Raggio said at a March 8 hearing on the topic, and have been tainted by an increasing reliance on fundraising.

"I've always thought the Founding Fathers showed wisdom by having federal judges appointed, and keeping politics out of the system," said Sen. Warren Hardy, R-Las Vegas, one of the bill's co-sponsors. "We need to find a way to get our judges out of politics and just have them concentrating on the law."

The issue of independence among Nevada's judiciary was put in stark relief when the Los Angeles Times last year published a series of articles about conflicts of interest involving several Las Vegas-based judges.

The series called Las Vegas a "juice town" in which attorneys and businesspeople give contributions to curry favor with judges, and it detailed repeated examples of apparent conflicts of interest that

make the appointment. Thereafter, judges would run in uncontested "retention" elections, in which voters could vote only either to keep or dump the judge.

## NEVADA PLAN

A compromise plan proposed in recent years in which a candidate would be appointed by the same process as the Missouri Plan, but then two years later would run in an open, contested race. Then, if elected, the judge would run in retention elections every six years thereafter. This plan, thought to be more palatable to Nevada voters, never gained political traction.

## RAGGIO PLAN

Somewhat similar to the Missouri Plan. For vacant District Court and Supreme Court seats, the governor would appoint one of the three names given to him by the Judicial Selection Commission. The judge's initial term would last from one to two years. Then, if the judge wants to stay in office, he would run in a retention election, needing to gain 60 percent of the vote to serve another six-year term. The Raggio Plan also would amend the Nevada Constitution to require each judge or justice to undergo a performance review by the newly created Judicial Performance Commission. This commission, after reviewing the judge's record and interviewing him, would then publicly release a report before the election, including a recommendation on whether the judge should be retained.

occurred when campaign contributors appeared before the recipients in court.

Changing the system would require amending the Nevada Constitution, a lengthy and arduous task. First, the Legislature would need to pass the same bill in two successive sessions. Then, voters would need to approve the change in a referendum. That means that even if passed by this Legislature, the soonest the bill could take effect would be Jan. 1, 2011.

Attempts to change the process by adopting versions of the Missouri Plan have failed twice in Nevada. Voters rejected the changes in 1972 and 1988.

Yet supporters believe momentum has shifted. Just a handful of conservative citizen-activists showed up in opposition to Raggio's bill at the recent hearing. Several prominent reform proponents testified, including Reno District Judge Bridget Robb Peck and UNLV Boyd School of Law Dean Richard Morgan.

"Given the expose of the L.A. Times articles, and given some of the distasteful judicial campaigns of recent years, and because of the increasing amount of money it takes to get elected judge in Nevada, if it's going to happen, it's going to happen now," said Las Vegas lawyer Vince Consul, past president of the State Bar of Nevada.

The current president, Rew Goodenow, wrote in a position paper supporting Raggio's bill that the measure would reduce the number of negative judicial campaigns, reduce the costs to candidates and allow judges more time to do things like "resolving disputes and deciding cases."

Goodenow also noted that Nevada is the only state that allows its elected judges to directly solicit campaign contributions - a more dangerous practice than ever given a 2002 U.S. Supreme Court ruling that allows judicial candidates to state how they would decide individual cases the very same moment they are accepting contributions.

"The issue of independence in the judiciary is rock-bottom vital," said Craig Walton, president of the Nevada Center for Public Ethics and another reform advocate. "If you can't count on the courts to give you a fair shake, then all is lost."

Raggio noted in his testimony that 23 states and the District of Columbia have judges that are appointed to their initial terms. Fifteen of those states also then hold retention elections for successive terms.

His is not a perfect plan, Raggio conceded. Judges would likely still need to raise some money for retention elections, he said, "but they wouldn't have to raise the kind of money they would in a contested election."

Like the jury system, he said, "it may not be ideal, but it's the best system we can get."

Opponents of change say the gubernatorial appointments raise the specter of possible cronyism, and that, more simply, judges elected in open contests are typically responsive to the concerns of voters.

Despite these long-running concerns, change may finally be coming,

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# Start process that allows voters to decide on judges

April 18, 2007

This week's vote in the state Senate approving a modified form of the Missouri Plan is a good start toward revising the current -- unsatisfactory -- method of selecting the best and most qualified judges. The Assembly should follow the Senate's lead and begin the process to allow voters to decide whether to amend the Constitution.



Nevada Sen. Mark Amodei, R-Carson City, previously said that letting voters compare judicial candidates is best, but he voted against Senate Joint Resolution 2 in a 15-6 vote. Five Republicans and one Democrat rejected the proposal. (CATHLEEN ALLISON/NEVADA APPEAL)

This discussion has been going on since at least the mid-1980s. The current proposal seems to be the best solution we've had so far.

The measure, approved as Senate Joint Resolution 2, would amend the state Constitution. It aims to fix much of what is wrong with requiring judicial candidates to campaign for money, as they campaign for votes. The plan aims to dissolve possible political pitfalls for judges when running for office. (Most of their campaign funds come from lawyers and litigants, who appear before them, so the perception of conflict of interest is inevitable, even if it isn't actual.)

The Constitution already allows selection of candidates by a commission in the case of a vacancy. The current debate, then, rests on whether they should be elected or appointed -- beholden to the voters or to a governor who appoints them.

SJR2 possesses faithfulness to the voters' wishes and a certain symmetry that offers much of what anyone would wish in choosing powerful public officials. It provides for informed choice by a panel of experts, a trial period for the judges, but most of all, it allows voters to have the ultimate say about the judges they want to retain or to dismiss after a year of service.

Judges are engaged in a complex system whose inner workings typically confounds the average voter. People don't always go into the voting booth with a clear vision of the candidates' qualifications or of overall performance (even when they have a service record and stand for re-election to the bench). SJR2 could give voters some help but would not take away their choice.

Relieving judges from the indignity and distraction of having to beg for campaign funds would be a good result, but it is not the most important one. Most important is that voters want to have a say in who their top court officials will be and they deserve it. They deserve to have the choice and they deserve to decide whether they want to amend the Constitution to give them that choice.

# A pay-to-play judicial system?

**Allegation of campaign misbehavior smacks of 2006  
report that revealed money talks in Nevada**

**By Jon Ralston**

Sun, Oct 19, 2008 (2 a.m.)

When Laura Fitzsimmons saw fellow attorney Kris Pickering jogging in her gated community some years ago, she acted swiftly. Fitzsimmons told the security guard Pickering was not a resident and should not be allowed in again. Pickering soon was running elsewhere.

That story, shared by someone with inside knowledge of the relationship, indicates the depth of the enmity between the two ultrasuccessful attorneys now enmeshed in a sensational story illuminating fault lines in the state's legal community and harking back to a devastating 2006 Los Angeles Times indictment of legalized incest masquerading as justice in Nevada.

The allegation, broken by my KLAS colleague George Knapp last week, is that political consultant Gary Gray told Supreme Court contender Pickering that she could receive up to \$200,000 in campaign contributions if she agreed to sign a document not to sit on longtime enemy Fitzsimmons' cases if she became a justice. Pickering called the FBI, which then taped a subsequent conversation between Gray and Pickering. No charges have been filed.

But even if no crime has been committed — and lawyers disagree on whether one was — the notion that such a conversation took place will confirm the worst cynicism about how campaigns and the judiciary work in our little backwater in the desert. That L.A. Times series, headlined “A stacked judicial deck,” detailed how judges apparently were influenced by friendships and contributions — it was a manifesto for an appointive judicial selection process.

And now the Pickering-Gray-Fitzsimmons story has reinforced that perception while resurrecting painful memories of a 15-year-old incendiary struggle over a Washoe County judge named Jerry Whitehead and whether he should have been disciplined by the high court — a case that split the Supremes and caused permanent fissures in the bar. Fitzsimmons, who represented Whitehead, and Pickering were on opposite sides of that dramatic battle (Whitehead eventually stepped down) and the antipathy has existed ever since.

They are two sides of the same coin. Fitzsimmons, a Democrat, has made a fortune suing companies and governments; Pickering, a Republican, became rich by defending wealthy people and businesses.

On its face, the allegation seems both plausible and impossible.

It has happened before — Fitzsimmons had induced Justice Bob Rose, who was on the anti-Whitehead

faction on the high court, to sign a promise-to-recuse letter. So isn't it possible she sought the same document from Pickering?

Fitzsimmons has been one of the most active contributors to judicial races for much of this decade. Indeed, that \$200,000 figure is about how much she and her husband, various corporate entities she controls and her friends bundled to Nancy Saitta, whom Fitzsimmons and others coaxed into a successful race against Justice Nancy Becker, who was seen as unfriendly.

Fitzsimmons and Gray are on friendly terms. So maybe at some gathering at Fitzsimmons' house, she talked about how it was in her interest to make peace with Pickering — but as with Rose, she decided not to just accept a verbal agreement and wanted it in writing. So, perhaps, Gray took the proposal to Pickering and reminded her of what Fitzsimmons did with Saitta.

It's the money part of this story that requires a suspension of disbelief. "Laura wouldn't give 10 cents to Kris Pickering," said one insider. That is, she despises Pickering enough to get her banned from the neighborhood, so she would never consider giving her money, no matter what Pickering agreed to.

For his part, Gray would have to be arrogantly reckless to tie the olive branch to campaign money. "In the most general sense, as a political consultant, I'm always bringing political information to my candidates and saying, 'Here's the situation, here's the effect' and I did in this case," Gray told my executive producer, Dana Gentry, implying that at least some of the story is true. Fitzsimmons isn't commenting.

No matter what Gray said — and perhaps the feds eventually will leak (hint, hint) the audiotape, this looks horrific. I am sure lawyers and Boyd Law School professors are blanching at the implications.

Conspiracy theories and ugly tactics are de rigeur for October in even-numbered years. But what makes this different is the unmasking (again) of a system in which lawyers spend lots of money trying to get a favorable majority on the high court, where justices can help determine where millions of dollars in settlements will go or how much money deep pockets will save. (I am told all the current justices have denied signing any recusal letters or even being solicited to do so.)

So once again, people will see evidence of a pay-to-play judicial system given national attention two years ago. You can almost hear the L.A. Times reporters making their reservations to return to McCarran.

**Mary "Kris" Pickering**

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April 11, 2007

## Reno Gazette Journal

It is always difficult to ask the voters to give up their right to vote -- whether for purely professional positions such as state controller or, as state Sen. Bill Raggio, R-Reno, has suggested, district and Supreme Court judges.

More often than not in Nevada, the voters have chosen to hold onto their vote, even for offices to which they pay little attention when election time rolls around.

In the case of judges, however, Raggio makes a compelling case.

The long-time legislator, who also was Washoe County district attorney, again this session has proposed that Nevada adopt a modified version of the Missouri Plan for choosing judges. Under his proposal, Senate Joint Resolution 2, judges for district courts and the state Supreme Court would be appointed by the governor from a list of three recommended by a judicial selection committee. Those judges would go before the voters, without an opponent, after a year in office to determine whether they should be retained.

Most judges in Nevada are, in fact, appointed by a governor. That's the constitutional system for filling vacancies. Rarely is there a vacancy for voters to fill. The judges then must campaign for the office at the next election. Sometimes they have an opponent, as happened in Washoe County last year; sometimes they get to run unopposed.

Raggio and many others in the state want to eliminate the political campaign, and the need for judicial candidates to raise campaign funds -- usually from the same people who are most likely to appear before them with legal cases.

Studies by the Progressive Leadership Alliance of Nevada, which often is on the opposite side of issues from Raggio, support his case against judicial campaigns. From 1998 through 2002, a PLAN study found, successful candidates for the Supreme Court raised more than \$1.5 million for their campaigns; two-thirds of the money came from the gaming industry or lawyers and lobbyists who had recent cases before the Supreme Court.

Numbers like that make some Nevadans wonder whether justice is for sale in the state. At the least, it makes them cynical about how the system works and who benefits from it.

Raggio's proposal, which, as a constitutional amendment, would have to be approved by the Legislature this year and again in 2009 before it went to the voters in 2010, wouldn't take the voters out of the picture. It simply would take some of the worst aspects of politics out of the

process. (Politics would not -- could not -- be taken completely out of it because governors are political animals.)

It's not a perfect plan, but it's better than the current system. The Legislature should give the voters the chance to decide for themselves.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR (RET.)

April 29, 2009

**VIA FACSIMILE**

Asy. Ellen Koivisto, Co-Chair  
Asy. Harry Mortenson, Co-Chair  
Assembly Elections, Procedures,  
Ethics, and Constitutional Amendments  
Nevada State Assembly  
Carson City, Nevada

Re: Nevada Judicial Merit Selection (SJR 2)

Dear Assemblywoman Koivisto and Assemblyman Mortenson,

I understand that the Senate has passed and the Assembly is considering a resolution this week to adopt a merit selection system for Nevada's judges, or at least most of them. This is a topic of interest to me. When I was in the Arizona State Senate I helped construct a change in Arizona's law to adopt merit selection for our appellate court judges and the judges in our larger counties. It remains one of my proudest achievements, and it has given Arizona as good a judicial system as any in the United States. It has been a great blessing in Arizona, and my sense is that Nevada would be equally well served if you were able to adopt a merit selection system.

Such a system would ameliorate the substantial problems caused by judicial elections. Elections frequently produce judicial candidates who raise money for their campaigns from the very lawyers who will appear before them and from special interest groups that have or will have legal issues to be resolved in the courts. Such fundraising leads to the perception, and sometimes the reality, that justice is not blind but biased. It has been shown that voters in states that elect judges through partisan elections are more cynical about the courts, more likely to believe that judges are legislating from the bench, and less likely to believe that judges are fair and impartial.

Committee: Assembly EPE/CA  
Exhibit: H, Page 1 of 3, Date: 04/30/2009  
Submitted by: Senator William J. Raggio

April 29, 2009

Page 2

An appointment process for judges followed by periodic retention elections offers clear advantages over judicial elections. Citizens can be confident that appointed judges are insulated from special interests who would seek to buy justice through campaign donations. Judges who don't need to raise money for partisan campaigns can focus on applying the law fairly and impartially to each litigant. Retention elections are a critical component of the system, as they provide for some accountability without subjecting voters to overt campaigning. Retention elections are most effective when information is gathered on judicial performance and made available to the public through voter guides. These guides give citizens the unbiased information on judicial performance necessary to an informed retention vote.

One of the most difficult issues for states that use a merit-selection system is the composition of the selection panel. I believe attorney representation on such panels is essential, but that the panels must not be dominated by lawyers. In Arizona, laypersons outnumber attorneys two to one on selection panels, and that model has been very successful. States that allow their selection panels to be dominated by attorneys face the sometimes founded attack that judicial selection is purely a matter of insider or bar politics. Such charges are best avoided altogether, as they tend to resonate with voters.

A fair and impartial judiciary is one of the essential elements of good government. I wish you success in supporting a good system of judicial selection for your wonderful state of Nevada.

Sincerely,



Sandra Day O'Connor

cc: Asy. Marcus Conklin  
Asy. William Horne  
Asy. Ruben Kihuen  
Asy. Harvey Munford  
Asy. James Orenschall  
Asy. Tick Segerbloom  
Asy. Debbie Smith  
Asy. Ty Cobb  
Asy. Heidi Gansert  
Asy. John Hambrick  
Asy. James Settelmeyer

April 29, 2009  
Page 8

bcc: Senator William J. Raggio  
Justice Ron D. Parraguirre

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND  
CONSTITUTIONAL AMENDMENTS**

**Seventy-Fifth Session  
May 12, 2009**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Ellen Koivisto at 3:54 p.m. on Tuesday, May 12, 2009, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/75th2009/committees/](http://www.leg.state.nv.us/75th2009/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Ellen Koivisto, Chair  
Assemblyman Harry Mortenson, Chair  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Heidi S. Gansert  
Assemblyman John Hambrick  
Assemblyman William C. Horne  
Assemblyman Ruben J. Kihuen  
Assemblyman Harvey J. Munford  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom  
Assemblyman James A. Settelmeyer  
Assemblywoman Debbie Smith

**COMMITTEE MEMBERS ABSENT:**

None



**Chairman Mortenson:**

Is there any discussion?

ASSEMBLYMAN HORNE MOVED TO DO PASS  
SENATE JOINT RESOLUTION 1 (1st REPRINT).

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

Is there any discussion on the motion? I see none.

THE MOTION PASSED. (ASSEMBLYWOMEN GANSERT AND SMITH WERE ABSENT FOR THE VOTE.)

We will move on to Senate Joint Resolution 2 of the 74th Session.

**Senate Joint Resolution 2 of the 74th Session: Proposes to amend the Nevada Constitution to revise provisions relating to the selection of justices and judges. (BDR C-177)**

**Patrick Guinan, Committee Policy Analyst:**

[Mr. Guinan read an explanation of the bill from prepared text (Exhibit O).]

**Chairman Mortenson:**

Remember, this resolution allows this proposal to go before the voters in 2010.

ASSEMBLYMAN CONKLIN MOVED TO DO PASS  
SENATE JOINT RESOLUTION 2 OF THE 74th SESSION.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

Is there any discussion on the motion?

**Assemblyman Hambrick:**

If I recall, there was a court challenge a few years ago saying that the language on a ballot issue was different between the two elections. Can we be absolutely sure that the proofreaders have not made any errors?

**Patrick Guinan:**

This resolution was amended during its consideration by the Legislature last session, so the final resolution, as it was approved by the last Legislature is the same resolution you are seeing now. There is no difference between the one that was voted out then and the one being voted on now.

**Chairman Mortenson:**

Is there any further discussion? I see none.

THE MOTION PASSED. (ASSEMBLYMAN OHRENSCHALL VOTED NO. ASSEMBLYWOMEN GANSERT AND SMITH WERE ABSENT FOR THE VOTE.)

Is there any further business to come before the Committee? I see none, so we are adjourned [at 6:20 p.m.].

**Assembly Concurrent Resolution 18: Directs the Legislative Commission to conduct an interim study concerning mass transportation in this State. (BDR R-55)**

[There was no action taken on this bill, but parts of it were to be amended into A.C.R. 30.]

RESPECTFULLY SUBMITTED:

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Terry Horgan  
Committee Secretary

APPROVED BY:

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Assemblywoman Ellen Koivisto, Chair

DATE: \_\_\_\_\_

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Assemblyman Harry Mortenson, Chair

DATE: \_\_\_\_\_

# FLOOR ACTIONS

## AMENDMENTS ON SECOND READING FLOOR VOTES AND STATEMENTS OTHER ACTIONS

**NOTE:** THESE FLOOR ACTIONS ARE TAKEN FROM THE *DAILY JOURNALS*  
([HTTP://WWW.LEG.STATE.NV.US/SESSION/75TH2009/JOURNAL/](http://www.leg.state.nv.us/session/75th2009/journal/)),  
WHICH ARE NOT THE OFFICIAL FINALIZED VERSIONS OF THE *JOURNALS*.  
CONSULT THE PRINT VERSION FOR THE OFFICIAL RECORD.

# Journal

OF THE

## SENATE OF THE STATE

### OF NEVADA

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SEVENTY-FIFTH SESSION

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THE FIRST DAY

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CARSON CITY (Monday), February 2, 2009

Senate called to order at 12:22 p.m.

President Krolicki presiding.

Prayer by the Chaplain, Dr. Robert Fowler.

Eternal God and Heavenly Father, we are grateful to You for this day You have given us to live, and we thank You for the life that You allow each and every one of us to possess on this day.

Thank You for giving us not only the strength to live this life but the ability to enjoy the life You have given us as well. We appreciate it, and we thank You.

Eternal God, we beseech You, today, on behalf of the public servants who have gathered in this marvelous hall among this august assembly. Thank You for them and for their desire to serve the citizens of the State of Nevada. We pray their hearts' desire is to see the people of this State prosper and live in peace.

Furthermore, we thank You for their families that provide support to them, the husbands, wives and children, who spend countless hours and days without the opportunity to see their loved ones as they serve our State. Yet, they understand how great the need is within our State. So, we thank You for them.

Our State needs Your help. Our State needs Your guidance. The Bible says unless the Lord builds the house, the laborers labor in vain. Our State needs Your direction. We are a blessed State. We are a world-renowned State. We are a powerful State. Our State has national and international impact and influence; and for that impact and for that influence, we express our appreciation to You. But, we need You to use it in a proper and upright fashion.

This Legislature must make decisions about life, about direction. There are decisions to make about our economy and about the infrastructure of our State. There are decisions to make about the educational system within our State. There are decisions to make about our families and our children and their health care and emotional conditions. There are decisions to make about the reduction of crime and the elevation of peace. Therefore, we beseech Your help today.

We thank You, God, for the collective wisdom in this hall today. We pray that wisdom rain down in a spirit of cooperation and collaboration to bring forth the solutions to cause our State to be both productive and peaceful.

I ask these things in the name of the One who gave me life and gave His life for me. The Bible calls him the Rose of Sharon, Lily of the Valley, the Bright Morning Star. My grandmother called Him a doctor in a sick room and a lawyer in a courtroom. I call Him my rock in a weary land, My Saviour, my Christ.

AMEN.

MESSAGES FROM THE GOVERNOR  
STATE OF NEVADA  
EXECUTIVE CHAMBER  
CARSON CITY, NEVADA 89701

January 30, 2009

THE HONORABLE STEVEN HORSFORD  
THE HONORABLE BARBARA BUCKLEY  
Nevada Legislature  
401 South Carson Street  
Carson City, Nevada 89701

DEAR MAJORITY LEADER HORSFORD AND SPEAKER BUCKLEY:

Enclosed please find my message to the 75th Session of the Nevada Legislature. As you know, I delivered the message, as required by Article 5, Section 10, of the *Nevada Constitution*, on Thursday, January 15, 2009, to a gathering of your colleagues and other guests in the Assembly Chambers in Carson City.

My staff and I look forward to working with all of you during the 75th Legislative Session.

Sincerely,  
JIM GIBBONS  
*Governor of Nevada*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, February 2, 2009

*To the Honorable the Senate:*

I have the honor to inform your honorable body that the Assembly on this day adopted Assembly Concurrent Resolution No. 1.

DIANE M. KEETCH  
*Assistant Chief Clerk of the Assembly*

COMMUNICATIONS  
MESSAGES FROM THE SECRETARY OF STATE  
STATE OF NEVADA  
DEPARTMENT OF STATE

January 9, 2009

CLAIRE JESSE CLIFT, *Secretary of the Senate*, 401S. Carson S. Carson Street, Carson City,  
Nevada 89701-4747

DEAR MRS. CLIFT:

This letter is in acknowledgement of the transfer of [Senate Joint Resolutions Nos. 1, 2, 3, 4 and 9 of the 74th Legislative Session pursuant to NRS 218.390\(2\)](#)

In addition, this is also a transmittal letter for Senate Bill No. 146 of the 74th Session which was vetoed by the Governor in the 74th Legislative Session. The enclosed, engrossed and enrolled copy of Senate Bill No. 146 of the 74th Session is being transferred to the 75th Legislative Session pursuant to NRS 218.430(2).

If you have any questions in this regard, please do not hesitate to contact the Elections Division at (775) 684-5705.

Respectfully,  
ROSS MILLER  
*Secretary of State*

**THE FIFTY-SECOND DAY**

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CARSON CITY (Wednesday), March 25, 2009

Senate called to order at 11:45 a.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by the Chaplain, Father Chuck Durante.

O You, who are beyond all names, yet whom we call Father and Mother, help us to balance power with compassion, gentleness with strength, as we open wide the doors of our hearts for the life of the universe to flow through.

We know that the gates of paradise, both here and there, swing open to the child.

Instruct us this day in the art of perpetual childhood which truly knows both honor and humility. Bless little Katherine Jaycie Sei and her family.

Unfold for us Your best kept secret: how by becoming part of the stream of the universe, we may learn to be playful, yet prayerful; ever-relaxed, yet constantly alert; always prepared, yet carefree as a child, and so achieve the harmony of heaven.

Bless and guide the work of the Senate this day.

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

*Mr. President:*

Your Committee on Energy, Infrastructure and Transportation, to which was referred Senate Bill No. 249, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MICHAEL A. SCHNEIDER, *Chair*

*Mr. President:*

Your Committee on Health and Education, to which was referred Senate Bill No. 307, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

VALERIE WIENER, *Chair*

*Mr. President:*

Your Committee on Judiciary, to which was referred Senate Bill No. 277, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

TERRY CARE, *Chair*

*Mr. President:*

Your Committee on Legislative Operations and Elections, to which were referred Senate Bill No. 36; Senate Joint Resolution No. 3 of the 74th Session, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

JOYCE WOODHOUSE, *Chair*

Senate Joint Resolution No. 2 of the 74th Session.

Resolution read third time.

Roll call on Senate Joint Resolution No. 2 of the 74th Session:

YEAS—14.

NAYS—Amodei, Breeden, Cegavske, Lee, McGinness, Schneider, Woodhouse—7.

Senate Joint Resolution No. 2 of the 74th Session having received a constitutional majority, Mr. President declared it passed.

Resolution ordered transmitted to the Assembly.

Assembly Bill No. 132.

Bill read third time.

Roll call on Assembly Bill No. 132:

YEAS—21.

NAYS—None.

Assembly Bill No. 132 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

UNFINISHED BUSINESS  
SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Concurrent Resolution No. 18.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Amodei, the privilege of the floor of the Senate Chamber for this day was extended to students from the Partnership of Community Resources: Allie Shek, Cody Tinker, Emily Allison, Jazmin Zuniga, Kylie Mosely, Lizzie Nunez, Michael Magno, Taryn Olivera, Elizabeth Sims, Alex Melandow, Brandi Friesen, Bre Chabot, Christian Reyes, Jennie Jorgensen, Jennie Stokes, Jessica Drinkwine, Kami Miller, Crizelle Reyes, Leah Walters, Marissa McRae, Ricardo Calles, Unique Davis, Jessika Harrison, Austin Harrison, Amber Taylor, Morgan Robinson, Alex Tallman, Amanda Howell, Cierra Pruitt, Cori Craig, Daniel Christensen, Hannah Higginson, Johathan Stamper, Kayla Ackermann, Mason Jackson, Jacob Weimer, Hannah McKinnish, Nicole Dorius, Torrey Dorius, Danielle Belanger, Christian Reyes, Amber Taylor and Morgan Robinson.

On request of Senator Breeden, the privilege of the floor of the Senate Chamber for this day was extended to Patrick Drummond.

On request of Senator Care, the privilege of the floor of the Senate Chamber for this day was extended to Taylor Dahlberg.

On request of Senator Cegavske, the privilege of the floor of the Senate Chamber for this day was extended to Khanh Pham and Tiffany Barrow.

## THE ONE HUNDRED AND EIGHTH DAY

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CARSON CITY (Wednesday), May 20, 2009

Assembly called to order at 10:50 a.m.

Madam Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Reverend Patrick Propster.

Philipians 4:4–7:

Rejoice in the Lord always. Again, I will say, rejoice! Let Your gentleness be known to all men. The Lord is at hand. Be anxious for nothing, but in everything by prayer and supplication, with thanksgiving, let your requests be made known to God; and the peace of God, which surpasses all understanding, will guard your hearts and minds through Christ Jesus.

Let us pray:

Lord, we know that there are days of stress and times of anxiousness, when futures are uncertain. It is in times such as these that we call upon Your mighty certainty and Your faithful constancy, in that we will trust. Lord God Almighty, we seek this day Your hand of divine guidance and Your wisdom beyond compare. This we ask in Thy Holy Name, the One and Only Jehovah Jireh, the Lord our Provider.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Conklin moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

### REPORTS OF COMMITTEES

*Madam Speaker:*

Your Committee on Commerce and Labor, to which were referred Senate Bills Nos. 89, 152, 176, 184, 197, 227, 230, 269, 310, 338, 355, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MARCUS CONKLIN, *Chairman*

*Madam Speaker:*

Your Committee on Government Affairs, to which was referred Senate Bill No. 408, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MARILYN K. KIRKPATRICK, *Chair*

*Madam Speaker:*

Your Committee on Government Affairs, to which was referred Senate Bill No. 190, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

DAVID P. BOBZIEN, *VICE Chair*

Senate Joint Resolution No. 2 of the 74th Session.

Resolution read third time.

Remarks by Assemblymen Carpenter, Anderson, Koivisto, Segerblom, Mortenson, and Horne.

Potential conflict of interest declared by Assemblywoman Dondero Loop.

Roll call on Senate Joint Resolution No. 2 of the 74th Session:

YEAS—29.

NAYS—Anderson, Carpenter, Christensen, Goedhart, Goicoechea, Grady, Gustavson, Manendo, McArthur, Ohrenschall, Parnell, Smith, Stewart—13.

Senate Joint Resolution No. 2 of the 74th Session having received a constitutional majority, Madam Speaker declared it passed.

Resolution ordered transmitted to the Senate.

Madam Speaker announced if there were no objections, the Assembly would recess subject to the call of the Chair.

Assembly in recess at 5:13 p.m.

## ASSEMBLY IN SESSION

At 5:56 p.m.

Madam Speaker presiding.

Quorum present.

## REPORTS OF COMMITTEES

*Madam Speaker:*

Your Committee on Ways and Means, to which was referred Assembly Bill No. 563, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MORSE ARBERRY JR., *Chair*

## MOTIONS, RESOLUTIONS AND NOTICES

Assemblywoman Parnell moved that Senate Bill No. 389 be taken from the Chief Clerk's desk and placed on the General File.

Motion carried.

Assemblyman Conklin moved that Senate Bill No. 230 be taken from the Chief Clerk's desk and placed on the General File.

Motion carried.

Assemblyman Ocegüera moved that all rules be suspended, reading so far had considered second reading, rules further suspended, Assembly Bill No. 563 considered engrossed, declared an emergency measure under the *Constitution*, and placed on third reading and final passage.

Motion carried.

## MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Conklin moved that Senate Bill No. 73 be taken from its position on the General File and placed at the bottom of the General File.

Motion carried.

# BILLS AND AMENDMENTS

SEE LINKS ON BILL HISTORY PAGE  
FOR COMPLETE TEXT

# SUPPLEMENTAL MATERIALS

BALLOT QUESTION TEXT AND VOTES FROM THE  
2010 GENERAL ELECTION

State of Nevada

Statewide

**Ballot Questions**

**2010**

To Appear on the November 2, 2010  
General Election Ballot

**QUESTION NO. 1**

Amendment to the *Nevada Constitution*

Senate Joint Resolution No. 2 of the 74th Session

**CONDENSATION (Ballot Question)**

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?

285,746 Votes (42.26%) Yes  No  390,370 Votes (57.74%)

**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.**

### ARGUMENTS FOR 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.

### **ARGUMENTS AGAINST 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.