

Senate Joint Resolution No. 2 of the 74th Session—Senators Raggio,
Hardy, Care, Coffin, Carlton, Amodei, Mathews, Nolan,
Titus and Townsend

FILE NUMBER.....

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 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 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 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 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]~~ *empanneling* 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.

