

QUESTION NO. 2

Amendment to the *Nevada Constitution*

Senate Joint Resolution No. 9 of the 74th Session

CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended to allow for the establishment of an intermediate appellate court, that would have jurisdiction over appeals of certain civil and criminal cases arising from the district courts?

Yes No

EXPLANATION

The proposed amendment to the *Nevada Constitution* would authorize the Legislature to establish an intermediate appellate court, known as the Nevada Court of Appeals, that would have jurisdiction to hear certain appeals arising from civil and criminal cases from the district courts. If the Legislature establishes the intermediate appellate court, the Nevada Supreme Court would be responsible for establishing the specific jurisdiction of the Court of Appeals and for providing review of its decisions.

Currently, language in Article 6 of the *Nevada Constitution* provides for the court system in Nevada, comprised of a Supreme Court, district courts, justices of the peace, and municipal courts. The Supreme Court is the only court in Nevada with jurisdiction to hear cases that are appealed from decisions rendered by the district courts. In addition, the Supreme Court has original jurisdiction over certain types of cases and administers the functions of the State Bar of Nevada and the judiciary.

The proposed amendment does not create the Court of Appeals, but rather authorizes the Legislature to establish the Court.

A “Yes” vote would authorize the Legislature to establish an intermediate appellate court.

A “No” vote would retain the existing court system.

ARGUMENTS FOR PASSAGE

Increasing population and caseloads throughout Nevada’s court system support the establishment of an intermediate Court of Appeals. For several decades, Nevada was the fastest growing state in the nation and the number of cases in the court system increased at a similar rate. Although the pace of Nevada’s population growth has slowed, the State is still growing and the workload of its court system continues to grow. The number of judges in the district courts has increased in recent years in an effort to maintain the public’s timely access to justice.

Nevada’s Supreme Court is the highest court in the State. It is one of the busiest courts in the nation and has already implemented technological and procedural improvements to accommodate caseload growth. It hears all appeals of civil and criminal cases originating in the district courts. However, the American Bar Association recommends that when the volume of appeals becomes so great that the Supreme Court cannot decide these cases at a desirable pace, an intermediate appellate court should be created. Nevada has reached that point.

The new Court of Appeals will improve efficiency, minimize delay, maintain quality in the judicial process, ensure timeliness of decisions, provide the Supreme Court with the ability to focus on precedent-setting cases, and increase the number of written opinions that establish the State’s common law. Currently, Nevada is one of only 11 states and the District of Columbia that do not have an intermediate appellate court.

Completion of the Regional Justice Center in Las Vegas would allow the Court of Appeals to share facilities and other existing resources with the Supreme Court. Therefore, the costs associated with establishing the Court of Appeals may be reduced since no new facilities may be necessary.

ARGUMENTS AGAINST PASSAGE

Establishment of the new Nevada Court of Appeals would simply shift the increasing caseload from the Supreme Court to the Court of Appeals and would add another step to the process of litigation. Another level in the judicial system is not desirable, as it would potentially increase costs for litigants and add time to an already lengthy legal process.

Establishment of the intermediate appellate court would require the State to allocate funds and resources to the court system that might otherwise be used for more essential purposes.

FISCAL NOTE

Financial Impact – Cannot Be Determined

If this proposal to amend the *Nevada Constitution* is approved by voters, the Nevada Legislature would be authorized to establish an intermediate appellate court within this State. Approval of this proposal by the voters would have no direct or immediate financial impact upon the State and local governments or individual taxpayers, as the proposal authorizes, but does not require, the Legislature to establish an intermediate appellate court.

If this proposal is approved by the voters and the Legislature chooses to establish an intermediate appellate court, there would be a financial impact upon the State and local governments. The provisions of the constitutional amendment specify the minimum number of judges that must make up the appellate court, but allows the Legislature to add additional appellate judges to the proposed court. The creation of an appellate court would require professional and administrative staff, in addition to other one-time and ongoing costs related to the operation of the appellate court. The Legislature would be responsible for setting the salaries of the judges and professional and administrative staff, as well as establishing the one-time and ongoing costs related to the operation of the court. Because it is not possible to determine the decisions the Legislature may make with respect to the establishment and operation of an intermediate appellate court, if the Legislature chooses to establish one, the specific financial impact upon the State and local government or individual taxpayers cannot be determined at this time.

If this question is approved by voters and the Legislature considers legislation that would establish an intermediate appellate court, a fiscal note would be prepared based on the proposed legislation and made available at that time for consideration by the Legislature.

Senate Joint Resolution No. 9 of the 74th Session—
Committee on Judiciary

FILE NUMBER 57

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to allow the Legislature to establish an intermediate appellate court.

Legislative Counsel's Digest:

This resolution proposes an amendment to the Nevada Constitution to allow the Legislature to establish an intermediate appellate court, known as the court of appeals. If the Legislature establishes the court of appeals, the court must consist of at least three judges. The initial judges will be elected at the first general election after the creation of the court, and each judge will be elected to serve a term of 6 years.

The court will have appellate jurisdiction in civil cases arising in district court and in criminal cases within the original jurisdiction of the district courts. The Nevada Supreme Court must fix the jurisdiction of the court and provide for the review of appeals decided by the court.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 3A, be added to Article 6 of the Nevada Constitution to read as follows:

Sec. 3A. 1. *The Legislature may provide by law for the creation of a court of appeals.*

2. *If the Legislature creates a court of appeals pursuant to subsection 1, then:*

(a) *The court of appeals must consist of three judges or such greater number as the Legislature may provide by law. If the number of judges is so increased, the Supreme Court may provide by rule for the assignment of any appeal to a panel of three judges for decision.*

(b) *Except as otherwise provided in paragraph (c) and unless the Legislature provides for a term of fewer years pursuant to paragraph (d), each judge of the court of appeals must be elected by the qualified electors of this State at the general election for a term of 6 years beginning on the first Monday of January next after the election. The initial judges of the court of appeals must be elected by the qualified electors of this State at the first general election following the creation of the court of appeals.*

(c) *Notwithstanding the provisions of paragraph (b), if, at the time that the Legislature establishes a court of appeals, this Article provides for the appointment of each justice of the Supreme Court and judge of the district court by the Governor, each judge of the court of appeals must be appointed by the Governor in the manner and for the term provided in Section 20 of this Article.*

(d) *Except as otherwise provided in paragraph (e), if there is an increase in the number of judges of the court of appeals, each additional judge must be elected by the qualified electors of this State at the first general election following the increase for a term beginning on the first Monday of January next after the election. The Legislature shall provide for an initial term of 6 or fewer years for each additional judge so that the terms of all judges of the court of appeals expire at the same time.*

(e) Notwithstanding the provisions of paragraph (d), if, at the time that there is an increase in the number of judges of the court of appeals, this Article provides for the appointment of each justice of the Supreme Court and judge of the district court by the Governor, each additional judge must be appointed by the Governor in the manner and for the term provided in Section 20 of this Article.

(f) The Supreme Court shall appoint one of the judges of the court of appeals to be chief judge. The chief judge serves a term of 4 years and may succeed himself. The chief judge may resign his position as chief judge without resigning from the court of appeals.

And be it further

RESOLVED, That Section 1 of Article 6 of the Nevada Constitution be amended to read as follows:

Section 1. The judicial power of this State ~~[shall be]~~ **is** vested in a court system, comprising a Supreme Court, **a court of appeals, if established by the Legislature**, district courts ~~[.]~~ and justices of the peace. The Legislature may also establish, as part of the system, courts for municipal purposes only in incorporated cities and towns.

And be it further

RESOLVED, That Section 4 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 4. **1.** The Supreme Court ~~[shall]~~ **and the court of appeals, if established by the Legislature**, have appellate jurisdiction in all civil cases arising in district courts, and also on questions of law alone in all criminal cases in which the offense charged is within the original jurisdiction of the district courts. **If the Legislature establishes a court of appeals, the Supreme Court shall fix the jurisdiction of the court of appeals and provide for the review, where appropriate, of appeals decided by the court of appeals.** The ~~[court shall]~~ **Supreme Court and the court of appeals** also have power to issue writs of mandamus, certiorari, prohibition, quo warranto ~~[.]~~ and habeas corpus and also all writs necessary or proper to the complete exercise of ~~[its appellate]~~ **their** jurisdiction. Each ~~[of the justices shall have power to]~~ **justice of the Supreme Court and judge of the court of appeals may** issue writs of habeas corpus to any part of the State, upon petition by, or on behalf of, any person held in actual custody ~~[.]~~ **in this State** and may make such writs returnable ~~[before himself]~~ **before the issuing justice or judge** or the ~~[Supreme Court,]~~ **court of which the justice or judge is a member**, or before any district court in the State or ~~[before]~~ any judge of ~~[said courts.]~~ **a district court.**

2. In case of the disability or disqualification, for any cause, of ~~[the Chief Justice or one of the associate justices]~~ **a justice** of the Supreme Court, ~~[or any two of them,]~~ the Governor ~~[is authorized and empowered to designate any]~~ **may designate a judge of the court of appeals or a** district judge ~~[or judges]~~ to sit in the place ~~[or places of such]~~ **of the** disqualified or disabled justice . ~~[or justices, and said judge or judges so designated shall receive their]~~ **The judge designated by the Governor is entitled to receive his** actual expense of travel and otherwise while sitting in the Supreme Court.

3. In case of the disability or disqualification, for any cause, of a judge of the court of appeals, the Governor may designate a district judge to sit in the place of the disabled or disqualified judge. The judge that the Governor designates is entitled to receive his actual expense of travel and otherwise while sitting in the court of appeals.

And be it further

RESOLVED, That Section 7 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 7. The times of holding the Supreme Court , **the court of appeals, if established by the Legislature**, and **the** district courts ~~[shall]~~ **must** be as fixed by law. The terms of the Supreme Court ~~[shall]~~ **must** be held at the seat of government unless the Legislature otherwise provides by law, except that the Supreme Court may hear oral argument at other places in the State. **The terms of the court of appeals, if established by the Legislature, must be held at the place provided by law.** The terms of the district courts ~~[shall]~~ **must** be held at the county seats of their respective counties unless the Legislature otherwise provides by law.

And be it further

RESOLVED, That Section 8 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 8. **1.** The Legislature shall determine the number of justices of the peace to be elected in each city and township of the State ~~[.]~~ and shall fix by law their qualifications, their terms of office and the limits of their civil and criminal jurisdiction, according to the amount in controversy, the nature of the case, the penalty provided ~~[.]~~ or any combination of these.

2. The provisions of this section affecting the number, qualifications, terms of office and jurisdiction of justices of the peace become effective on the first Monday of January, 1979.

3. The Legislature shall also prescribe by law the manner, and determine the cases , in which appeals may be taken from justices and other courts. The Supreme Court, **the court of appeals, if established by the Legislature**, the district courts ~~[.]~~ and such other courts ~~[.]~~ as the Legislature shall designate ~~[, shall be]~~ **are** courts of record.

And be it further

RESOLVED, That Section 11 of Article 6 of the Nevada Constitution be amended to read as follows:

Sec. 11. The justices of the Supreme Court , **the judges of the court of appeals, if established by the Legislature**, and the district judges ~~[shall be]~~ **are** ineligible to any office, other than a judicial office, during the term for which they ~~[shall]~~ have been elected or appointed . ~~[, and all]~~ **All** elections or

appointments of any such judges by the people, Legislature ~~[]~~ or otherwise ~~[]~~ during said period ~~[]~~ to any office other than judicial ~~[, shall be]~~ **are** void.

And be it further

RESOLVED, That Section 15 of Article 6 of the Nevada Constitution be amended to read as follows:

~~[Sec:]~~ **Sec.** 15. The justices of the Supreme Court , **the judges of the court of appeals, if established by the Legislature,** and **the** district judges ~~[shall]~~ **are** each **entitled to** receive for their services a compensation to be fixed by law and paid in the manner provided by law, which ~~[shall]~~ **must** not be increased or diminished during the term for which they ~~[shall]~~ have been elected, unless a vacancy occurs, in which case the successor of the former incumbent ~~[shall]~~ **is entitled to** receive only such salary as may be provided by law at the time of his election or appointment . ~~[, and provision shall]~~ **A provision must** 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 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.

2. The term of office of any justice or judge so appointed expires on the first Monday of January following the next general election.

3. Each nomination for the Supreme Court ~~[shall]~~ **or the court of appeals, if established by the Legislature, must** be made by the permanent Commission, composed of:

(a) The Chief Justice or an associate justice designated by him;

(b) Three 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.

4. Each nomination for the district court ~~[shall]~~ **must** be made by a temporary commission composed of:

(a) The permanent Commission;

(b) A member 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 judicial district, not a member of the legal profession, appointed by the Governor.

5. 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. 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]~~ **must** be appointed when a vacancy occurs, and their terms ~~[shall]~~ expire when the nominations for such vacancy have been transmitted to the Governor.

7. 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]~~ **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 judge of the court of appeals, if established by the Legislature,** 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 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]~~ **must** 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 judge of the court of appeals, no judge of the court of appeals 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.

And be it further

RESOLVED, That Section 3 of Article 7 of the Nevada Constitution be amended to read as follows:

~~[Sec:]~~ **Sec.** 3. For any reasonable cause to be entered on the journals of each House, which may ~~[:]~~ or may not be sufficient grounds for impeachment, the ~~[Chief Justice and associate]~~ justices of the Supreme Court , **the judges of the court of appeals, if established by the Legislature,** and **the**

judges of the district courts ~~[shall]~~ **must** be removed from office on the vote of two thirds of the members elected to each branch of the Legislature . ~~[, and the]~~ **The** justice or judge complained of ~~[, shall]~~ **must** be served with a copy of the complaint against him ~~[, and shall]~~ **and** have an opportunity of being heard in person or by counsel in his defense . ~~[, provided, that no]~~ **No** member of either branch of the Legislature ~~[shall be]~~ **is** eligible to fill the vacancy occasioned by such removal.

And be it further

RESOLVED, That Section 8 of Article 15 of the Nevada Constitution be amended to read as follows:

~~[Sec:]~~ **Sec.** 8. The Legislature shall provide for the speedy publication of all statute laws of a general nature ~~[,]~~ and such decisions of the Supreme Court ~~[,]~~ **and the court of appeals, if established by the Legislature,** as it may deem expedient . ~~[, and all]~~ **All** laws and judicial decisions ~~[shall]~~ **must** be free for publication by any person . ~~[, provided, that no]~~ **No** judgment of the Supreme Court **or the court of appeals** shall take effect and be operative until the opinion of the court in such case ~~[shall be]~~ **is** filed with the clerk of said court.
