

## QUESTION NO. 1

Amendment to the *Nevada Constitution*

Senate Joint Resolution No. 14 of the 76th Session

### CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended to create a Court of Appeals that would decide appeals of District Court decisions in certain civil and criminal cases?

Yes       No

### EXPLANATION & DIGEST

**EXPLANATION**—This ballot measure proposes to amend the *Nevada Constitution* to create a Court of Appeals consisting of three judges. The Nevada Supreme Court would establish the types of District Court decisions to be heard by the Court of Appeals and also determine when a Court of Appeals decision may be reviewed by the Nevada Supreme Court.

**A “Yes” vote would create a Court of Appeals within the existing court system.**

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

**DIGEST**—Article 6 of the *Nevada Constitution* establishes the court system of the State of Nevada, which currently consists of the Nevada Supreme Court, District Courts, Justices of the Peace, and Municipal Courts. The Nevada Supreme Court is the only appellate court in Nevada that hears and decides all appeals from final judgments entered by Nevada’s District Courts. This ballot measure would create a Court of Appeals to decide some of the appeals currently decided by the Supreme Court. The Supreme Court would establish the types of District Court decisions to be heard by the Court of Appeals and also determine when a Court of Appeals decision may be reviewed by the Supreme Court. This ballot measure would create, generate, or increase public revenue because existing law would require candidates for judgeships on the Court of Appeals to pay fees to run for judicial office. It also would create, generate, or increase public revenue because, if a party appeals a decision of the Court of Appeals to the Nevada Supreme Court, the *Nevada Constitution* would require the party to pay a fee for filing the appeal.

The Court of Appeals would consist of three judges, but this ballot measure would authorize the Legislature to increase the number of judges. The Governor would appoint the initial three judges from nominees provided by the Commission on Judicial Selection. The initial three judges would be appointed to two-year terms. Thereafter, Court of Appeals judges would be elected to six-year terms at the general election. Additionally, the Supreme Court would assign,

as needed, one or more Court of Appeals judges to serve part-time as supplemental District Court judges.

If this ballot measure is approved by the voters, Senate Bill No. 463 of the 2013 Legislative Session would carry out the constitutional provisions creating the Court of Appeals.

### **ARGUMENTS FOR PASSAGE**

Nevada's Supreme Court has been overburdened for decades as it struggles to provide the public with speedy access to justice in the face of an ever-growing population. The increasing backlog of appeals is delaying justice in Nevada. Nevada is one of only ten states that do not have a Court of Appeals. Our Supreme Court is one of the busiest in the nation because it must hear and decide all appeals from final judgments entered by Nevada's 82 District Court judges. Although our Supreme Court has tried to manage and reduce its caseload through technological and procedural measures, more needs to be done to make our justice system work better for our citizens and businesses.

The American Bar Association (ABA) recommends that when the volume of appeals becomes so great that a state supreme court cannot decide cases in a timely fashion, a court of appeals should be created. Nevada has reached that point. The ABA's recommended annual caseload for an appellate judge is 100 cases. The Nevada Supreme Court's caseload for each justice was 333 cases in Fiscal Year (FY) 2013, more than three times the recommended caseload.

As a result of this heavy caseload, the Supreme Court must resolve most appeals through unpublished orders that bind only the parties in a single case, instead of published opinions that establish statewide precedent for all future cases. In recent years, because of the extensive time and effort involved in researching and writing published opinions, the Supreme Court has issued published opinions in only 3 to 4 percent of all cases. The lack of published opinions can lead to the same issues being litigated repeatedly. A Court of Appeals would decide the more routine cases, which would allow the Supreme Court to focus on precedent-setting published opinions.

A Court of Appeals would provide more timely access to justice for Nevadans and a more stable business climate for existing and new businesses. It would promote a quicker resolution of all cases, including such personal and time-sensitive matters as family law, foreclosure mediation, and business disputes. A "yes" vote will enable Nevada's court system to meet the demands of the twenty-first century and provide our citizens and businesses with an improved level of appellate review already available in 40 other states.

### **ARGUMENTS AGAINST PASSAGE**

Nevada's court system has been functioning without a Court of Appeals for the past 150 years, and voters rejected the creation of a Court of Appeals in 1972, 1980, 1992, and 2010. The backlog of appeals has not sufficiently increased since 2010 to justify creating a Court of Appeals now.

There are other methods to manage caseloads without creating a new court for appellate review. When necessary in the past, the Legislature has added more District Court judges and Supreme Court justices to handle increased workloads. Even if it is necessary to spend additional State money on improving the judicial system, it would be better to spend the money on increasing judicial resources within the existing court structure instead of creating a Court of Appeals.

Although a Court of Appeals would initially consist of three judges, the Legislature could add more judges, staff, and facilities to operate a Court of Appeals in the future, with no guarantee of an improved judicial system. Adding a new court could further delay justice for some litigants.

A “no” vote will stop the creation of another layer in Nevada’s court system, prevent increased spending of our limited resources on the court system, and confirm, for the fifth time in four decades, that Nevada voters do not want a Court of Appeals.

## **FISCAL NOTE**

### **Financial Impact—Yes**

The Administrative Office of the Courts has indicated that this ballot measure creating a Court of Appeals would require operating expenses of approximately \$800,000 in FY 2015, relating to judicial selection, salaries, and other expenses for the administration of a Court of Appeals. However, the Legislature, in Assembly Bill No. 474 of the 2013 Legislative Session, approved funding to the Interim Finance Contingency Account for the initial implementation of a Court of Appeals in FY 2015, contingent upon the passage of this ballot measure. Therefore, no additional funding beyond that which has already been approved would be necessary for the operation of a Court of Appeals in FY 2015.

The Administrative Office of the Courts has indicated that ongoing costs for administration of a Court of Appeals, if approved by the voters, would be approximately \$1.5 million per year. It is not known at this time, however, whether the Legislature and the Governor would choose to provide this funding from the State General Fund or from other sources.

Representatives of the Nevada Supreme Court have indicated that a Court of Appeals initially would be housed in existing court facilities in northern and southern Nevada, which would avoid the need for capital expenditures to establish a Court of Appeals. Thus, no immediate financial impact upon State government for capital costs is anticipated.

After the initial two-year terms of the three judges appointed to a Court of Appeals, candidates for future judgeships will be required by existing law to pay filing fees to the Office of the Secretary of State in order to seek judicial office. This will result in an increase in revenue to the State General Fund beginning in FY 2016, but the amount of the increase cannot be determined with any reasonable degree of certainty because the number of candidates cannot be predicted.

## FULL TEXT OF MEASURE

Senate Joint Resolution No. 14—Committee on Judiciary

FILE NUMBER.....

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to create an intermediate appellate court.

### Legislative Counsel’s Digest:

This resolution proposes an amendment to the Nevada Constitution to create an intermediate appellate court, known as the court of appeals. The court of appeals will consist of three judges, but the Legislature may by law increase the number of judges. The initial three judges must be appointed by the Governor from among three nominees for each seat chosen by the Commission on Judicial Selection. These initial judges will be appointed for a term of 2 years beginning on the first Monday of January of the year following the effective date of this constitutional amendment. After the initial terms, the judges of the court of appeals will be elected at the general election to serve a term of 6 years.

The court of appeals will have appellate jurisdiction in civil cases arising in district courts and in criminal cases within the original jurisdiction of the district courts. The Nevada Supreme Court must fix the jurisdiction of the court of appeals by rule and provide for the review of appeals decided by the court of appeals. In addition, the Nevada Supreme Court must provide by rule for the assignment of one or more judges of the court of appeals to devote a part of their time to serve as supplemental district judges, where needed.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

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 court of appeals consists 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 must provide by rule for the assignment of each appeal to a panel of three judges for decision.*

*2. After the initial terms, 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 three judges of the court of appeals must be appointed by the Governor from among three nominees selected for each individual seat by the permanent Commission on Judicial Selection described in subsection 3 of section 20 of this Article. After the expiration of 30 days from the date on which the permanent Commission on Judicial Selection has delivered to the Governor its list of nominees for the initial judges, if the Governor has not made the appointments required by this Section, the Governor shall make no other appointment to any public office until the Governor has appointed a judge from the list submitted. The term of the initial judges is 2 years beginning on the first Monday of January next after the effective date of this Section, and an initial judge may succeed himself. If there is an increase in the number of judges, each additional judge must be elected by the qualified electors of this State at the first general election*

*following the increase for a term of 6 years beginning on the first Monday of January next after the election.*

*3. The Chief Justice of 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, except that the term of the initial chief judge is 2 years. The chief judge may succeed himself. The chief judge may resign the position of chief judge without resigning from the court of appeals.*

*4. The Supreme Court shall provide by rule for the assignment of one or more judges of the court of appeals to devote a part of their time to serve as supplemental district judges, where needed.*

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

Sec. 1. The judicial power of this State **[shall be]** *is* vested in a court system, comprising a Supreme Court, *a court of appeals*, 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* 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. *The Supreme Court shall fix by rule the jurisdiction of the court of appeals and shall provide for the review, where appropriate, of appeals decided by the court of appeals.* The **[court shall also]** *Supreme Court and the court of appeals* 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]** *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]** *may* designate **[any]** *a judge of the court of appeals or a* district judge **[or judges]** to sit in the place **[or places]** of **[such]** *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 the 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 whom 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* 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 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*, the district courts **[.]** and such other courts **[.]** as the Legislature **[shall designate, shall be] designates 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* 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. 15. The justices of the Supreme Court , *the judges of the court of appeals* 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* 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 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*, 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*** 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]** 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* 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.