

## 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.