

## **The Nevada Plan: The Busick Group's Role in Changing Nevada's State Constitution**

### **The Problem**

The Nevada judicial system operates using an election process to fill vacated judicial seats for a specific term in office. Judicial candidates are not subjected to any pre-qualification standards. Frequently, it is the candidate with the most money, best advertising, and endorsements that gets elected. Unfortunately this can result with the least qualified candidate being elected to serve a lengthy judicial term.

Over the past several years Nevadans have sought judicial reform; however, when the time came to vote for change they were unwilling to modify the state constitution to support a more progressive means for qualifying, seating, and retaining judges. Two previous attempts were made to adopt a modified Missouri Plan — both successfully passed through the legislature but were then rejected by the voters.

It is our understanding, the reason the people of Nevada were unwilling to change their state constitution and enact a modified Missouri Plan was because they were uninformed as to how this change would benefit them. Many feared the adoption of a modified Missouri Plan meant they would lose the power of choice and so they voted “no.” In recent years, Nevada has been the subject of nation-wide discussions regarding their elected judicial officials conduct and performance.

### **The Busick Group's Solution**

The Busick Group met with Senator William Raggio, sponsor of bill draft C-177, a modified Missouri Plan bill and offered our support. He invited us to participate and we submitted a draft version of a Nevada Plan (also known as a modified Missouri Plan). Our plan has been presented to the legislative bill drafter along with a request to include our language into the final bill.

In concert with our efforts to help draft the needed legislative changes we began meeting with public and private agencies to gain their support and participation. We are working collaboratively with private, public, and non-profit agencies including attorneys and private citizens who seek to change to the current system.

We will lobby the bill through the state legislature and upon its successful passage we will then establish one of the most integral components to successful change: we will form a Political Action Committee (PAC) to educate Nevadans as to why they should vote to modify their state constitution.

### **What is the Nevada Plan (also known as a modified Missouri Plan)**

Under this system, the governor of Nevada fills vacancies occurring on the Nevada Supreme Court, the State Court of Appeals, the State Court of Criminal Appeals, and State District Courts due to the death, resignation, and theoretically, the impeachment and removal of a member of any of these bodies. These appointments are not made from persons strictly of the governor's choosing, however – the selections are instead made from a list of three potential nominees chosen by a commission, the makeup of which guarantees it to be bipartisan and representative of minorities, with members representing both the legal community and the citizenry at large. If the governor finds none of the persons selected to be to meet his approval, he can then order the commission to prepare a new list of three other prospective nominees. The public is made aware of the list of nominees at the time the list is presented to the governor. The person chosen by the governor then begins service on the court; at the first statewide general election following his or her appointment the person's name is placed before the public on the ballot on a simple yes-no basis, i.e., "Shall William J. Henry be retained as Judge, District Family Court, for Washoe County?" If 60% of the voters decide this question in the negative, by a "no" vote, then the process outlined above starts over. Every six years, all members of all of the appellate courts of Nevada are subjected to this process as well.

A separate panel reviews the record of incumbent judges and makes its results public approximately six weeks prior to the retention elections held at the beginning of each judicial term. This report gives the panels rationale for its recommendations based on the public record of each of the judges and an interview process in which potential areas of improvement are noted. The report summarizes these findings and notes the vote by which the judge was recommended for retention, but not how each individual commissioner voted.

### **The Benefits of a Nevada Plan**

Nevadans will have the opportunity to participate in the selection and retention process of judges throughout their state. Gone will be the days where the best funded and most popular, but perhaps least qualified, candidate is elected. With a Nevada Plan in place the people will have several opportunities to participate in deciding who they want to serve in their key judicial positions and be able to hold them more accountable to their job performance. A direct added benefit is more qualified applicants may step forward to participate in the judicial process because they are no longer constrained by the increasingly high costs associated with the current electoral process.

Placing judges will be more like that of filling traditional job vacancies. Applicants will apply to be considered for a judicial position and then go through a

qualification and interview process. Those recommended for consideration will be announced to the general public which will have the opportunity to give their feedback to the Governor prior to selection. Once a judge is selected, they will begin serving under a probationary period of up to 18 months or until the next general election. At the next general election the people of Nevada will have the opportunity to vote to retain the Judge based upon their performance during the probationary period. Nevadans will be given information including preemption and appeals numbers as compared to their peers as well as other pertinent information about their performance and conduct prior to the vote. Should the people feel the judge's performance does not merit retention, they will vote to remove the judge and the selection process will begin again.