RULE BY LAWYERS – by Sharron Angle

The "Missouri Plan" is a system of appointing judges that is being pursued by the Nevada Bar Association vowing to raise hundreds of thousands of dollars in support, even though Silver State voters have already twice rejected it — in 1972 and 1998. They have an ally in the mainstream media who looked into their crystal ball and said the voters were ready this time.

Senator Bill Raggio is the primary sponsor of the proposal, currently in the Legislature as Senate Joint Resolution 2.

"As an attorney who has practiced for over 50 years in Nevada, I believe the appointment process is far superior to the election process with respect to the judiciary," he recently wrote. "The appointment process helps to ensure an independent judiciary."

Actually, if you've never understood the reason for lawyer jokes, you'll love this idea.

Elko Commissioner Warren Russell said, "The sheer number of lawyers supporting this bill should worry Nevadans," and pointed to the unanimous decision of the Elko County Commission to oppose this bill.

Under it, justices to be appointed would first be selected by a permanent commission of five attorneys and four non-lawyers. Four of the attorneys would be selected by the state bar association. The fifth would be the current Chief Justice of the State Supreme Court — which sets the rules for, and dominates, the state bar association.

Not only is the commission membership tilted in favor of lawyers but evidence from other states suggests that its functional dynamics would be, also, encouraging non-lawyers to regularly defer to the legal "experts."

This commission would choose three nominees and send their names to the governor. He or she can select *no one* but someone suggested by this committee. The bill forces the governor to appoint from the list before he can make any other appointments.

Nowhere in this process is there any independent public vetting. Woe to any free thinkers that might challenge Nevada's current status quo system!

Last May, the International Association of Women Judges pointed out that problem is a big reason for popular election of judges.

"Let's not forget that 150 years ago many states changed to election of judges to avoid politics, to keep the governor from appointing only his buddies or his largest campaign contributor as a judge," said the IAWJ.

"Many have argued that an elective system favors women and minorities who are not 'insiders' and would never be appointed to the bench."

While Sen. Raggio says his appointment process will help "ensure an independent judiciary," let's look at the actual record.

Remember what the Las Vegas Review-Journal reported a couple of times in 2003.

“The fix is in,” wrote columnist and Assistant Editorial Page Editor Vin Suprynowicz, quoting a source close ground zero. “Guinn went to Rose and Shearing on the Supreme Court some time ago and got their agreement that they’ll impose the tax hikes.”

If the present election system reeks of corrupt relations between Supreme Court justices and the governor’s office, what will happen when they alone effectively choose Nevada justices?

Senator Warren Hardy is another of SJR2’s supporters. In a recent e-mail he offered the bizarre argument that the Nevada Supreme Court’s notorious 2003 *Guinn v. Legislature* would not have occurred except for judicial elections. “As you know, once the political pressures of the legislative session passed, the court overturned that decision,” said Hardy.

This argument attempts to stand reality on its head. It was Nevada’s free elections that righted the *Guinn v. Legislature* wrong. It was a new judiciary, of elected Supreme Court Justices, that overturned that decision.

Remember that the chief author of the notorious decision, then Chief Justice Deborah Agosti, declined to run again out of fear of outraged voters. Then another of the justices who backed that notorious decision, Nancy Becker, ran and was rejected by voters.

Senator Warren Hardy tries to use Federalist 78 to support his stance: “Clearly, Hamilton embraced the notion that, in our system of government we simply must have a judiciary which will endeavor to interpret the law as it is written and not seek to legislate from the bench or be forced to consider the political consequences of their rulings.”

What Hardy fails to mention is that the federal system of judicial appointments insures all are well vetted by scrutiny of the United States Senate as well as the American public. The hearings go on for days, with constant press coverage, and the questions, today, are particularly political.

Raggio asserts that, “The appointment plan does not take away the people’s right to vote. Should an appointee wish to retain the seat, he must declare his candidacy in a retention election. His subsequent election would be decided by the voters.”

The reality, however, is that the retention votes fail to qualify as genuine free elections. Thus, even in states where a 60 percent supermajority is required for retention (the standard in SJR2), 97.6 percent of all appointed justices remain in office for life.

One reason is that voters are denied a true election, with candidates making the case why they should be elected and why the opponent should not. With no opposition, there is no contest and thus no race. Effectively, both the media and the voters ignore the whole matter.

Second, the name recognition and free media that comes automatically with the appointment process carries over into a fierce incumbent advantage in the retention election. This is already a problem in Nevada. One of Nevada’s current justices was appointed after the 2003 decision and has a bad and activist liberal record. However, the power of his incumbency has allowed him to effectively skate below the public’s radar.

Both Hardy and Raggio appear to believe that political utopia could be reached if *all* elections could be appointments with uncontested retention elections.

Senate Joint Resolution 2 offers Nevadans the nice, soggy, middle ground of panel consensus. In actuality, it stealthily removes accountability and leadership from judicial decisions. Remember what former British Prime Minister Margaret Thatcher said: “Consensus is the negation of leadership.”

The vote on SJR2 in the Senate was divided, with six defenders of freedom dissenting – Amodei, Beers, Cegavske, Heck, McGinness, and Schneider. On the other side, 16 voted “yes.” The fact that this was Majority Leader Raggio’s bill may have been a factor, since little gets out of the Nevada Senate without his permission.

Paradoxically, the end Hardy e-mail on this subject indirectly acknowledges the greater wisdom that the Nevada Constitution attributes to Silver State voters, as opposed to Silver State politicians: “In addition, if we [in the legislature] do pass SJR 2, it simply means the question will advance to a vote of the people…”

It is we the people who must ultimately evaluate and reject this ill-conceived piece of legislation.

Thankfully, the Nevada Constitution still places this responsibility with us — not some panel of establishment-approved insiders.