

### STATE QUESTION NUM. 3

#### Amendment to the *Nevada Constitution*

Shall the *Nevada Constitution* be amended to allow all Nevada voters the right to participate in open primary elections to choose candidates for the general election in which all voters may then rank the remaining candidates by preference for the offices of U.S. Senators, U.S. Representatives, Governor, Lieutenant Governor, Secretary of State, State Treasurer, State Controller, Attorney General, and State Legislators?

Yes .....

No .....

#### EXPLANATION & DIGEST

**EXPLANATION**— This initiative, if enacted, changes Articles 5 and 15 of Nevada’s Constitution for U.S. Congressional, Governor, Lieutenant Governor, Secretary of State, State Treasurer, State Controller, Attorney General, and State Legislator elections, eliminating partisan primaries and establishing an open top-five primary election and a ranked-choice voting general election.

For these offices, all candidates and voters participate in a single primary election regardless of party affiliation or non-affiliation. The top five finishers advance to the general election, and the general election winner is determined by ranked-choice voting:

- General election voters will rank the candidates in order of preference from first to last, if they wish to rank more than just their first preference.
- As currently provided for during certain primary races, a general election candidate receiving first-choice votes of more than 50% is declared winner.
- If no candidate is the first choice of more than 50% of the voters in the general election, the candidate with the fewest votes is eliminated. Each voter who had ranked the now-eliminated candidate as their first choice, has their single vote transferred to their next highest choice candidate.
- This tabulation process repeats until the one candidate with more than 50% support is determined as the winner.

If passed, the Legislature would need to adopt implementing legislation by July 1, 2025. These changes would go into effect for the 2026 election cycle, starting with the primary election in June 2026.

**A “Yes” vote would amend Articles 5 & 15 of the *Nevada Constitution* to allow all Nevada voters the right to participate in open primary elections to choose candidates for the general election in which all voters may then rank the remaining candidates by preference for the offices of U.S. Senators, U.S. Representatives, Governor, Lieutenant Governor, Secretary of State, State Treasurer, State Controller, Attorney General, and State Legislators.**

**A “No” vote would retain the provisions of Articles 5 & 15 of the *Nevada Constitution* in their current form.**

**DIGEST**—Under current law, Nevada primary elections are closed elections in which the “candidates for partisan office of a major political party and candidates for nonpartisan office must be nominated at the primary election by a vote of the voters registered to each respective major political party” (NRS 293.175). Only registered voters of a major political party may take part in the selection of the candidates for a major political party for the general election during a primary election. Voters registered to a minor party or not affiliated with a party may only vote for nonpartisan contests during a primary election.

Article 15, section 14 of the *Nevada Constitution* currently provides that a plurality of votes given at an election by the people, shall constitute a choice. This means that the candidate who receives the majority of the votes, regardless of whether or not it is a majority (more than 50%) of the votes cast, is identified as the winner of that contest.

If approved by the voters, this ballot measure would return on the ballot of the general election in 2024. If passed then as well, it would amend the *Nevada Constitution* to change the primary election so that all voters, regardless of their party affiliation, would be able to cast votes for all candidates. This would change the primary election from a means for major political parties to identify their candidate for the general election and make it instead a means to simply reduce the total number of candidates whose names will appear on the ballot at the general election for partisan office. Under this change, no more than five candidates shall advance to the ballot of the general election for partisan office.

This ballot measure would also change the manner of selection for the offices of U.S. Senators, U.S. Representatives, Governor, Lieutenant Governor, Secretary of State, State Treasurer, State Controller, Attorney General, and State Legislators such that the voters would be able to rank their candidates by preference in the general election. The changes identified in this ballot measure would not apply to the office of President or Vice-President of the United States. Under this new system, voters would be able to list, or rank, the candidates of their choice by preference, identifying on their ballot up to five candidates for each partisan contest in their order of preference. Votes would be tabulated in a manner that determines if a candidate is highest-ranked on a majority of the active ballots, then that candidate is deemed elected and the tabulation is complete. If no candidate is highest-ranked on a majority of the active ballots, tabulation would proceed in sequential rounds as outlined in Section 7 of the proposed constitutional amendment until the candidate with a majority of the votes is declared winner.

Under existing law, ballots for statewide office must include an option for voters to select “None of These Candidates” (NRS 293.269). Under the proposed changes, any votes for “None of These Candidates” shall be tabulated, recorded, and made public, but would not be counted for the purpose of electing or ranking any candidates for partisan office.

Finally, this ballot measure requires that the legislature create or modify existing statutes by July 1, 2025 in order to effect the implementation of these changes to the *Nevada Constitution*.

### **ARGUMENTS FOR PASSAGE**

The current partisan election process is not working for Nevada. Current law excludes over one third of all Nevada voters from the taxpayer-funded partisan primary elections.<sup>1</sup> These closed partisan primaries are controlled by political party insiders and no citizen should be compelled to join a political party so as to vote.<sup>2</sup>

Despite being funded on the backs of all taxpayers<sup>3</sup>, Nevada’s partisan primaries are only open to Nevadans who register as Republican or Democrat.<sup>4</sup> This current system leaves out many voters and entitles a very small, partisan minority to determine the general election candidates.<sup>5</sup>

The closed partisan primary system leaves many feeling like their voices don’t matter, and that their elected leaders only represent the most extreme party constituents.<sup>6</sup> Our leaders are often more concerned with angry partisan rhetoric rather than sensible policy making. Question 3 will greatly improve Nevada’s election process, putting the power of elections where it belongs – in the hands of all voters, rather than the party establishment.<sup>7</sup>

Question 3 will give ALL Nevada voters the right to participate regardless of their party registration.<sup>8</sup> By creating an open primary, Question 3 allows all voters a voice in all those who appear on the general election ballot regardless of party affiliation.<sup>9</sup>

In addition to giving Nevadans more voice, Question 3 will also give voters more choice by establishing a Ranked-Choice general election system.<sup>10</sup> Ranked-Choice is a simple change to our general elections that allows voters the opportunity to rank up to five candidates who best represent their positions, rather than having to choose between the “lesser of two evils”.<sup>11</sup> Nevadans will list the candidates in order of preference; however, ranking is not required, and voters can continue to simply vote for their top choice if they so choose.<sup>12</sup> The candidate who receives the broadest support from all voters will be the winner.<sup>13</sup> This simple change encourages candidates to focus on issues that matter to the majority rather than the partisan bases of the parties.<sup>14</sup>

Question 3 ensures that every Nevadan’s voice is heard and that every vote matters, regardless of party registration, and makes elected officials more accountable to all Nevadans.<sup>15</sup>

Vote YES and give Nevadans more choice and more voice in our elections.

*The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Sondra Cosgrove (Chair), Pat Hickey, and Doug Goodman. This argument, with active hyperlinks, can also be found at [www.nvsos.gov](http://www.nvsos.gov).*

<sup>1</sup><https://thenevadaindependent.com/article/non-major-party-voters-now-make-up-majority-of-registered-nevada-voters-for-first-time-in-state-history> (noting that 34.8% of voters consists of non-partisan or minor party voters).

<sup>2</sup>NRS 293.175 specifies that only candidates for partisan office of a major political party can appear on primary ballot.

<sup>3</sup>Pursuant to NRS Chapter 293, primary elections are currently used as the nominating process for major political parties even though the elections are conducted by the government at taxpayer expense. NRS 293.175.

<sup>4</sup>NRS 293.175 specifies that only candidates for partisan office of a major political party can appear on primary ballot.

<sup>5</sup>Id.

<sup>6</sup><https://www.congressionalinstitute.org/2017/02/03/study-voters-frustrated-that-their-voices-are-not-heard/>; <https://www.uniteamerica.org/strategy/nonpartisan-primaries> (Address how elected officials must appeal and answer to the small minority of voters who participate in partisan primaries); [https://www.fairvote.org/research\\_rcvcampaigncivility](https://www.fairvote.org/research_rcvcampaigncivility)

<sup>7</sup>Initiative’s amendment to add Article 15, Section 17(1)(c) specifying that “[a]ny registered voter may cast a primary ballot for any candidate for partisan office regardless of the political party affiliation of the voter ....”

<sup>8</sup>Initiative’s amendment to add Article 15, Section 17(1)(c).

<sup>9</sup>Initiative’s amendment to add Article 15, Section 17(1)(c) specifying that “[a]ny registered voter may cast a primary ballot for any candidate for partisan office regardless of the political party affiliation of the voter ....”

<sup>10</sup>Initiative’s amendment to add Article 15, Section 18.

<sup>11</sup>Initiative’s amendment to add Article 15, Section 18(7), specifying that if no single candidate is the first ranked choice of 50% plus 1 of all votes, the tabulation process continues until the candidate with the most support among all voters is determined.

<sup>12</sup>Initiative’s amendment to add Article 15, Section 18(8).

<sup>13</sup>Initiative’s amendment to add Article 15, Section 18(7), specifying that if no single candidate is the first ranked choice of 50% plus 1 of all votes, the tabulation process continues until the candidate with the most support among all voters is determined.

<sup>14</sup>Initiative’s amendment to add Article 15, Section 18(7), specifying that if no single candidate is the first ranked choice of 50% plus 1 of all votes, the tabulation process continues until the candidate with the most support among all voters is determined. As such, candidates must now appeal to the majority of all voters, not just the partisan voters that can presently participate.

<sup>15</sup>Id.

## **REBUTTAL TO ARGUMENTS FOR PASSAGE**

Question 3’s jungle primary and confusing multi-stage general election proposal does nothing to address partisanship in Nevada’s political process, and will likely make things worse.

Instead, this initiative will fundamentally damage the traditional conduct of our elections, and it could function to shut out parties entirely from running general election candidates in some races. In many districts, the only choices in November might be between candidates of the same party, or among fewer parties’ candidates than currently.

In addition, if Question 3 passes, independent candidates not affiliated with the political parties would be prevented from launching a campaign in the general election, and would instead have to compete directly in expensive primaries against established party candidates. Nevadans need more quality voices and ideas in politics, but this initiative actually narrows voters’ options.

Question 3’s out-of-state special interest funders want to permanently lock this extreme change in our elections into our state Constitution, meaning this risky scheme would be nearly impossible to change or repeal, and the cost of future elections would increase.

This initiative’s result will be more money in toxic political campaigns and thousands of votes thrown away because of confused voters, with no improvement in our political system.

*The above rebuttal was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee members: Emily Persaud-Zamora (Chair) and Eric Jeng. This rebuttal can also be found at [www.nvsos.gov](http://www.nvsos.gov).*

## **ARGUMENTS AGAINST PASSAGE**

The changes to elections proposed by Question 3 do not put voters first. This initiative, funded by out-of-state millionaires and special interest groups, would completely overhaul elections in Nevada, making them more complicated and more time-consuming for voter participation.<sup>1</sup> It could cost Nevadans millions of taxpayer dollars to implement, and lock these changes into our state Constitution, making it nearly impossible to repeal if this scheme fails.<sup>2</sup>

”One person, one vote” is at the core of free and fair elections in America. Question 3 raises questions

regarding whether it undermines that basic principle, and leaves some voters at risk of having votes ultimately not counted in the final tally.<sup>3</sup> For example, if a voter chooses to rank only one candidate, their ballot might be excluded from the final count – as if they didn’t show up for the election at all. Meanwhile, voters who selected multiple candidates will have their votes counted multiple times. In 2021, more than 140,000 ballots in New York City were declared “inactive” before the final round of tabulation and no longer factored into the ultimate vote count – nearly 15% of all ballots cast.<sup>4</sup>

Ranked-choice voting is a complex process that results in up to five times as many ballots uncounted because of errors.<sup>5</sup> Currently, Nevada’s voting process is straightforward: voters pick which candidate they support, and the candidate with the most votes wins. Ranked-choice voting makes casting ballots more confusing and tedious, and decreases participation in our elections.<sup>6</sup> In close races, it could take weeks to determine the winner, leading many voters to question the validity of the results.<sup>7</sup>

Question 3 would replace our traditional primary system with a California-style “jungle primary” system. This means candidates from a single political party can overwhelm the primary and shut out other political parties from even appearing on the November general election ballot. This is an extreme change that threatens the ability to have all viewpoints represented during a general election in Nevada.

Question 3 would enshrine a complicated, time-consuming, error-prone, and expensive new voting system into the *Nevada Constitution*. This constitutional change would be extremely difficult to repeal if the new system fails voters.

Our elections won’t be better if Nevadans are left questioning whether their vote will be counted in final tallies. Voters in other states and municipalities have recently rejected ranked-choice voting.<sup>8</sup> We encourage our fellow Nevadans to vote no on Question 3.

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<sup>1</sup> <https://www.nvsos.gov/soscandidateservices/anonymousaccess/ViewCCEReport.aspx?syn=%252ff%252f9C1d9yf9pnbB28UmDwQ%253d%253d>

<sup>2</sup> <https://www.nvsos.gov/sos/home/showpublisheddocument/10568/637886493853600000>; <https://www.elections.alaska.gov/petitions/19AKBE/19AKBESStatementOfCosts.pdf>

<sup>3</sup> <https://www.reviewjournal.com/opinion/editorials/editorial-nevadans-should-be-wary-of-ranked-choice-voting-2616717/>

<sup>4</sup> <https://www.nytimes.com/interactive/2021/06/22/us/elections/results-nyc-mayor-primary.html>

<sup>5</sup> <https://commonwealthmagazine.org/politics/the-two-sides-of-ranked-choice-voting/>

<sup>6</sup> <https://news.sfsu.edu/news-story/ranked-choice-voting-linked-lower-voter-turnout>

<sup>7</sup> <https://www.nytimes.com/article/nyc-primary-results-explained.html>

<sup>8</sup> <https://www.wbur.org/news/2020/11/04/question-two-ranked-choice-voting-massachusetts-no>

## **REBUTTAL TO ARGUMENTS AGAINST PASSAGE**

The opposition statement above is filled with misleading claims. Political party bosses want to keep their power by stopping Question 3 – continuing to keep over 1/3 of voters from voting in Nevada’s closed primaries.<sup>1</sup>

Question 3 guarantees every Nevadan the right to vote in primaries, maximizing the principle of one person one vote.<sup>2</sup> Question 3 promotes better governance because elected officials will be held



accountable to the majority of Nevadans, not just partisan extremists.<sup>3</sup>

In the general election, Question 3 lets voters choose just one candidate or rank up to five in order of preference, giving voters more say and the winning candidate will be the one with broadest support of all voters.<sup>4</sup> No votes are uncounted or excluded. Millions of U.S. voters outside Nevada already have such a right, including many Military voters.<sup>5</sup>

Question 3 necessitates no greater delay in ballots being counted, as we already have mail voting.<sup>6</sup>

Maximizing the right to vote is hardly complicated. Citizens prioritize choices everyday. Prioritizing those candidates so that the winner is most reflective of the will of voters — as opposed to party bosses — is what matters.

Vote YES ON Question 3 – to help fix a broken system.

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<sup>2</sup> Initiative’s amendment to add Article 15, Section 17(1)(c ) specifying that “[a]ny registered voter may cast a primary ballot for any candidate for partisan office regardless of the political party affiliation of the voter ....”

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<sup>4</sup> Id.

<sup>5</sup> [https://www.fairvote.org/where\\_is\\_ranked\\_choice\\_voting\\_used](https://www.fairvote.org/where_is_ranked_choice_voting_used)

<sup>6</sup> AB 321 (2021 Nevada Legislature).

## FISCAL NOTE

### FINANCIAL IMPACT – YES

#### OVERVIEW

The Statewide Constitutional Initiative Petition – Identifier: C-01-2021 (Initiative) proposes to amend various sections of the *Nevada Constitution* to make the following changes to the state’s election process:

1. All primary elections for partisan offices shall be held as open primaries.
2. The five candidates receiving the most votes at the primary election shall advance to the general election, regardless of the candidate’s party affiliation.
3. General elections for partisan offices, which include United States Senator, United States Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and state legislators, but excludes the offices of President and Vice President of the United States, shall be conducted by a ranked-choice ballot.

## FINANCIAL IMPACT OF THE INITIATIVE

Pursuant to Article 19, Section 2 of the *Nevada Constitution*, an initiative proposing to amend the *Nevada Constitution* must be approved by the voters at two successive general elections in order to become a part of the *Constitution*. If this Initiative is approved by voters at the November 2022 and November 2024 General Elections, the provisions of the Initiative would become effective on the fourth Tuesday of November 2024 (November 26, 2024), when the votes are canvassed by the Supreme Court pursuant to NRS 293.395.

The following provisions of the Initiative have been identified as having a potential financial impact upon the state and local governments:

1. The provisions of the Initiative requiring that all primary elections for partisan offices be held as open primaries will result in a single sample ballot being produced for all registered voters for each primary election, irrespective of party affiliation, rather than separate sample ballots for voters of each political party. Although these provisions will eliminate the need for local governments to prepare separate sample ballots for each major political party, the addition of all candidates for each partisan race to all ballots, regardless of party affiliation, may result in an increase in the number of pages required to print each sample ballot, thereby potentially increasing the costs borne by local governments to provide those sample ballots.

Because the number of candidates who may choose to run for each partisan office in future primary elections cannot be predicted, the size of the sample ballot sent to each registered voter, and the resultant financial impact upon local governments, cannot be determined with any reasonable degree of certainty.

2. The provisions of the Initiative requiring that the five candidates receiving the most votes at the primary election shall advance to the general election, regardless of the candidate's party affiliation, may also affect the number of candidates appearing on the sample ballot produced for registered voters at each general election and, therefore, may increase the number of pages required to print each sample ballot for registered voters at any general election held in this state.

Because the number of candidates who may choose to run for each office in future elections cannot be predicted, the potential increase to the size of the sample ballot that is sent to each registered voter before each general election, as well as the potential financial impact upon local governments that may result from these changes to the size of the sample ballot, cannot be determined with any reasonable degree of certainty.

3. The provisions that require general elections for certain partisan offices specified within the Initiative be conducted using a ranked-choice ballot will increase costs for the state and local governments, beginning with the general election that would be held in November 2026, if the Initiative is approved by voters at the November 2022 and November 2024 general elections.

In December 2021, the Secretary of State's Office provided information to the Fiscal Analysis Division relating to potential costs relating to the implementation of ranked-choice voting. This information, which was obtained with the cooperation of local governments, estimated one-time expenditures by the state and local governments of approximately \$3.2 million beginning in FY

2025, prior to the November 2026 General Election, relating to voter outreach and education, increased ballot stock costs, personnel expenses, equipment, software and programming costs for voting machines, and updates to training materials.

The Secretary of State's Office additionally estimated ongoing expenditures relating to the implementation of ranked-choice voting of approximately \$57,000 per fiscal year, relating to the payment of license fees to the vendors supplying election software to each of Nevada's seventeen counties. The information provided also indicated that there may be additional ongoing expenditures relating to increased ballot stock that would need to be used by the counties for each primary and general election, depending on the number of individuals who run for the offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and the State Legislature. However, because the number of individuals who may run for these offices in any given election cannot be predicted, the resultant impact upon ongoing expenditures for the state and local governments cannot be determined with any reasonable degree of certainty.

Based on the information provided by the Secretary of State's Office, in cooperation with affected local governments, the Fiscal Analysis Division has determined that the implementation of the Initiative will result in additional one-time and ongoing expenditures for the state and local governments following its effective date. However, the Secretary of State's estimates of these costs outlined in this financial impact statement were based on information available in December 2021. The Fiscal Analysis Division cannot easily estimate the costs associated with the implementation and administration of the Initiative beginning with the 2026 election cycle; therefore, the actual impacts upon one-time and ongoing expenditures that would be borne by the state and local governments in FY 2025 and future fiscal years cannot be determined with any reasonable degree of certainty.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – May 20, 2022