

*State of Nevada*

**STATEWIDE  
BALLOT QUESTIONS**

**2022**



**To Appear on the November 8, 2022  
General Election Ballot**

*Issued by*

**Barbara K. Cegavske  
Secretary of State**

**BARBARA K. CEGAVSKE**  
*Secretary of State*

STATE OF NEVADA



**SCOTT W. ANDERSON**  
*Chief Deputy Secretary of State*

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*Deputy Secretary for Elections*

**OFFICE OF THE  
SECRETARY OF STATE**

Dear Nevada Voters:

As the November 8, 2022 general election approaches, it is the responsibility of the Secretary of State's office to ensure voters have the information necessary to make informed decisions on the three statewide ballot questions that will be presented to them this year. Accordingly, the Secretary of State's office has prepared this informational booklet that provides the exact wording and a brief summary of each statewide ballot question, as well as fiscal notes detailing the potential financial impacts to the government. Arguments for and against passage as well as the full text of the measures of each statewide ballot question are also provided.

For your reference, **Ballot Question Number 1** proposes an amendment to the *Nevada Constitution* and originated from Senate Joint Resolution No. 8 of the 80th Session. If Ballot Question Number 1 is approved by the voters, the proposed constitutional amendment will become law. This ballot question proposes to guarantee equal rights.

**Ballot Question Number 2** proposes an amendment to the *Nevada Constitution* and originated from Assembly Joint Resolution No. 10 of the 80th Session. If Ballot Question Number 2 is approved by the voters, the proposed constitutional amendment will become law. This ballot question proposes to prospectively increase the required minimum wage paid to employees.

**Ballot Question Number 3** qualified for the ballot through the initiative process and seeks to amend the *Nevada Constitution*. If Ballot Question Number 3 is approved by the voters, it will be placed on the ballot a second time in 2024. If a majority of voters vote in favor of the question in 2024 as well, the proposed constitutional amendment will become law. This ballot question proposes to amend the Nevada Constitution to allow for open primaries and ranked-choice voting.

I encourage you to carefully review and consider each of the ballot questions prior to Election Day on November 8, 2022. As a voter, your decisions on these ballot questions are extremely important as they seek to amend the *Nevada Constitution*.

Thank you for your attention on this important matter. If you require additional information, please do not hesitate to contact the Elections Division at (775) 684-5705 or [nvelect@sos.nv.gov](mailto:nvelect@sos.nv.gov) or visit the Secretary of State's website at [www.nvsos.gov](http://www.nvsos.gov).

Respectfully,

A handwritten signature in black ink that reads "Barbara K. Cegavske".

Barbara K. Cegavske  
Secretary of State

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**2022  
STATEWIDE BALLOT QUESTIONS  
SUMMARY**

| <b>Question No.</b> | <b>Title</b>   | <b>Originated</b>                              | <b>If Passed in 2022</b>  |
|---------------------|--|--|---------------------------|
| 1                   | Proposes to guarantee equal rights   | Senate Joint Resolution 8<br>(81st Session)    | Becomes Law               |
| 2                   | Proposes to prospectively increase the required minimum wage paid to employees                 | Assembly Joint Resolution 10<br>(81st Session) | Becomes Law               |
| 3                   | Proposes to amend the Nevada Constitution to allow for open primaries and ranked-choice voting | Initiative Petition                            | Returns to Ballot in 2024 |

## STATE QUESTION NO. 1

Amendment to the *Nevada Constitution*

Senate Joint Resolution No. 8 of the 80th Session

### CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended by adding a specific guarantee that equality of rights under the law shall not be denied or abridged by this State or any of its cities, counties, or other political subdivisions on account of race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry, or national origin?

Yes       No

### EXPLANATION & DIGEST

**EXPLANATION**—This ballot measure would add new language to the *Nevada Constitution* specifically guaranteeing that equality of rights under the law shall not be denied or abridged by the State or any of its cities, counties, or other political subdivisions based on race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry, or national origin.

**A “Yes” vote would amend the *Nevada Constitution* to add new language specifically guaranteeing that equality of rights under the law shall not be denied or abridged by the State or any of its cities, counties, or other political subdivisions based on race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry, or national origin.**

**A “No” vote would not amend the *Nevada Constitution* to add new language specifically guaranteeing that equality of rights under the law shall not be denied or abridged by the State or any of its cities, counties, or other political subdivisions based on race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry or national origin.**

**DIGEST**—Existing federal and state constitutional and statutory provisions prohibit discrimination based on race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry, or national origin in various manners. For example, the First Amendment to the *United States Constitution* prohibits discrimination based on creed or religion. (*Lee v. Weisman*, 505 U.S. 577, 590 (1992) (explaining that the government cannot violate “the central meaning of the Religion Clauses of the First Amendment, which is that all creeds must be tolerated and none favored.”); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, --- U.S. ---, 137 S. Ct. 2012, 2019-21 (2017) (explaining that the First Amendment prohibits laws that discriminate against or impose unequal treatment on persons based on creed or religion))

The Equal Protection Clause of the Fourteenth Amendment to the *U.S. Constitution* also prohibits states and local governments from denying “to any person within its jurisdiction the equal protection of the law.” Equal protection requirements apply to the federal government through the Due Process Clause of the Fifth Amendment to the *U.S. Constitution*. The U.S. Supreme Court has interpreted the Equal Protection Clause as not requiring the government to treat every person the same, but instead as requiring the government to treat persons who are in similar conditions or circumstances, or “similarly situated,” in the same way. (*City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985))

For the purposes of the federal Equal Protection Clause, the U.S. Supreme Court has developed a three-tiered test that courts apply to determine whether a law that imposes a burden upon or provides a benefit to one class of persons to the exclusion of others is valid. Depending on the classification involved, courts apply tests known as strict scrutiny, intermediate scrutiny, or rational basis scrutiny to analyze the government’s justification for the classification. (*City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439-41 (1985); *Rico v. Rodriguez*, 121 Nev. 695, 703 (2005)) The Nevada Supreme Court also applies those tests to equal protection challenges to the validity of laws under the *Nevada Constitution*. (*Rico v. Rodriguez*, 121 Nev. 695, 703 (2005)) Under the three-tiered analysis, courts apply the strict scrutiny test to laws that classify persons by race, national origin, religion, or alienage or that infringe upon certain fundamental rights. The strict scrutiny test requires the government to prove that the classification is narrowly tailored to serve a compelling government interest. (*Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007); *Tarango v. State Indus. Ins. Sys.*, 117 Nev. 444, 454 (2001)) Courts apply the intermediate scrutiny test to laws that classify persons by gender or their status as having been born out of wedlock. The intermediate scrutiny test requires the government to prove that the classification has a substantial relationship to an important government interest. (*United States v. Virginia*, 518 U.S. 515, 532-33 (1996); *Olson v. State*, 95 Nev. 1, 3 (1979)) For all other classifications, courts typically apply scrutiny under a rational basis test which only requires the government to demonstrate that the classification is rationally related to a legitimate government interest. (*City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985); *Rico v. Rodriguez*, 121 Nev. 695, 703 (2005))

Although not certified as part of the *U.S. Constitution*, a proposed amendment is currently pending to the *U.S. Constitution*, which states that “[e]quality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex.” This federal Equal Rights Amendment was passed by a two-thirds majority of Congress in 1973 and ratified by three-fourths of the states in 2020. However, the National Archivist has not certified the federal Equal Rights Amendment as part of the *U.S. Constitution* pursuant to 1 U.S.C. § 106b as a result of several unresolved legal issues regarding the ratification process that are subject to ongoing litigation, including the expiration of ratification deadlines set by Congress and the passage in several states of legislative measures intended to rescind prior ratifications by those states. (*Virginia v. Ferriero*, 525 F. Supp. 3d 36 (D.D.C. 2021), *appeal docketed sub nom. Illinois v. Ferriero*, No. 21-5096 (D.C. Cir. May 7, 2021)) Although Nevada voters rejected ratification of the federal Equal Rights Amendment in an advisory question at the 1978 General Election, the Nevada Legislature ratified the Amendment in 2017. (*Senate Joint Resolution No. 2*, File No. 13, 79th Session)

Existing federal statutes also prohibit discrimination based on the classifications enumerated in this ballot measure in various manners. For example, the Religious Freedom Restoration Act of 1993 prohibits the federal government from substantially burdening the exercise of religion. (42 U.S.C. §§ 2000bb et seq.) With respect to employment, Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e et seq.), the Equal Pay Act of 1963 (29 U.S.C. § 206(d)), the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 621-634), section 501 of the Rehabilitation Act of 1973 (29 U.S.C. § 791) and Titles I and V of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) prohibit discrimination in employment based on race, color, religion, sex (including sexual orientation, gender identity, and pregnancy), age (40 years or older), disability, ancestry, or national origin. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.) prohibits discrimination on the basis of sex in educational programs and activities that receive federal funding. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601-3609), known as the Fair Housing Act, prohibits housing discrimination based on race, color, national origin, religion, sex (including gender, gender identity, sexual orientation, and sexual harassment), familial status, or disability. Title II of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000a et seq.) prohibits discrimination on the basis of race, color, religion, or national origin in places of public accommodation. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) prohibits discrimination on the basis of race, color, or national origin in programs or activities that receive federal funding. These laws are a nonexhaustive listing of the federal laws that prohibit discrimination based on certain classifications.

The *Nevada Constitution* also prohibits discrimination based on the classifications enumerated in this ballot measure in various manners. For example, Section 4 of Article 1 of the *Nevada Constitution* guarantees the free exercise of religion. In addition, the Nevada Supreme Court has interpreted the requirement in Section 21 of Article 4 of the *Nevada Constitution* that “all laws shall be general and of uniform application throughout the State” to be coextensive with the guarantees of the Equal Protection Clause of the Fourteenth Amendment to the *U.S. Constitution*. (*Laakonen v. District Court*, 91 Nev. 506, 508 (1975)) Furthermore, the U.S. Supreme Court has held that states are free to provide additional constitutional protections beyond those provided by the *U.S. Constitution*. (*California v. Ramos*, 463 U.S. 992, 1014 (1983))

Existing Nevada statutory law also prohibits discrimination based on the classifications enumerated in this ballot measure in various manners. For example, these statutory prohibitions against discrimination apply to juvenile rights, eligibility for certain grants, housing assistance, college admission standards, gaming regulations, employment practices, eligibility for apprenticeships, and places of public accommodation. (*See, for example, Nevada Revised Statutes* (NRS) 62B.510, 217.420, 274.140, 281.370, 284.150, 288.270, 319.060, 338.125, 396.530, 463.151, 463.4076, 610.020, 610.150, 613.330, and 651.070.) These laws are a nonexhaustive listing of Nevada statutory laws that prohibit discrimination based on certain classifications.

This ballot measure proposes to amend the *Nevada Constitution* by adding a specific guarantee that equality of rights under the law shall not be denied or abridged by this State or any of its cities, counties, or other political subdivisions based on race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry, or national origin.

## ARGUMENTS FOR PASSAGE

Equality is a cornerstone of our democracy, but not everyone enjoys full equality. Historically, certain groups have been discriminated against because of their characteristics. One of the most effective ways to help ensure equality is to specifically include protections from discrimination in the *Nevada Constitution*, making them far more difficult to repeal, undermine, or overturn based on the political mood of the day. Approving Question 1 will establish an enduring commitment to equality for everyone.

Although some protection against discrimination exists in federal and state law, there are gaps in the existing legal patchwork that have resulted in unavailable or inadequate protection for certain classes of people, including instances of unequal pay for women and pregnancy discrimination. This ballot measure fills those gaps by providing comprehensive state constitutional guarantees of equal treatment under the law for the classifications of race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry, and national origin.

Contrary to opponents' arguments, religion is one of the classifications protected by this ballot measure because courts interpret "creed" to have the same meaning as "religion." Therefore, by prohibiting discrimination based on a person's "creed," this ballot measure adds an additional layer of constitutional protection for our religious liberties.

Approving Question 1 will also improve outcomes for people in the protected classifications who have been discriminated against in Nevada by allowing our courts to apply a heightened level of scrutiny to laws or actions of the State or local governments that violate any of the protected classifications. This ballot measure will provide clear guidance to courts and lawmakers on Nevada's commitment to protect against discrimination and advance equality based on the unique text and history of Nevada's equal rights amendment.

Do not be misled by opponents' arguments about Question 1. Their arguments consist of unfounded speculation intended to distract from the clear goal of this ballot measure, which is to ensure equality. They argue that this ballot measure may be used to protect abortion rights, undermine women's sports by allowing male and transgender athletes to compete unfairly against women and girls in school sports, and challenge the traditional separation of men's and women's restrooms and locker rooms in government-owned facilities. First, Nevada law already guarantees the right to an abortion, and this ballot measure will not change that right. Second, this ballot measure will not remove the State's ability to ensure competitive balance in school sports. Finally, it will not prevent the traditional separation of men's and women's restrooms and locker rooms in government-owned facilities, such as public schools, universities, and colleges.

This ballot measure will not diminish the rights of some people at the expense of others but, instead, will advance equality for all by filling the gaps in existing protections. Additionally, this ballot measure will not eliminate the authority of the State and local governments to protect classifications of people, including children and other vulnerable populations, who have always

been entitled to such protections. Governmental entities will still be able to pass laws or take actions to protect classifications of people but will have to honor Nevada's constitutional commitment to equality when doing so.

Everyone deserves to be treated equally under the law. Vote "Yes" on Question 1.

### **ARGUMENTS AGAINST PASSAGE**

Proponents fail to acknowledge the impact Question 1 may have on individual liberties and safety. They state that this ballot measure will protect against religious discrimination based on a person's "creed" or religion. But they fail to explain how this ballot measure can give new constitutional protections to classifications such as sex, sexual orientation, and gender identity or expression and, at the same time, actually protect the religious liberties of individuals who hold traditional views on marriage and gender and want to live according to those values.

Question 1 may also be used by proponents to support access to abortion. Already, the highest courts in some states have interpreted their constitutional equal rights provisions to mandate taxpayer funding of medically necessary abortions through Medicaid. If Question 1 is approved, proponents may use this ballot measure as a basis to demand taxpayer funding of abortions in Nevada. And if the U.S. Supreme Court overturns *Roe v. Wade*, proponents may use this ballot measure as a basis to claim abortion rights in Nevada despite the Supreme Court's decision.

Further, Question 1 may be used by biological males and transgender athletes as a basis to undermine women's sports by demanding equal rights that allow them to compete unfairly against women and girls in school sports and for athletic scholarships. Question 1 may also be used to challenge the traditional separation of men's and women's restrooms and locker rooms in government-owned facilities, such as public schools, universities, and colleges, potentially allowing biological men and women in each other's restrooms and locker rooms and threatening everyone's personal safety and privacy.

In 1978, Nevadans overwhelmingly voted against the proposed Equal Rights Amendment to the *U.S. Constitution*, which was limited to protecting against discrimination on account of sex. If passed, Question 1 would dramatically expand the equal rights protected specifically in the *Nevada Constitution* beyond sex to include a total of ten classifications. However, this ballot measure contains no provisions to guide courts in resolving conflicts among the protections provided to all of these classifications. For instance, there is no way to know how courts would resolve challenges to existing age-based laws regarding sexual consent, child endangerment, and parental consent and notification, some of which involve classifications based on both age and sex. No other state has implemented such a broad and legally untested constitutional provision protecting equal rights, and Nevada should not be the first state to do so.

Enshrining such broad and untested equal rights language into the *Nevada Constitution* will make it difficult to fix its inevitable unintended consequences. Approval of Question 1 will result in a flood of litigation, clogging our court system because of its vague and expansive language. Further,



because Question 1 cements this language into the *Nevada Constitution*, it will require another lengthy constitutional amendment process to undo its negative effects.

This ballot measure is harmful and misguided. Vote “No” on Question 1.

### FISCAL NOTE

#### Financial Impact—Cannot be Determined

If approved, Question 1 would amend the *Nevada Constitution* to specify that equality of rights under the law shall not be denied or abridged by this State or any of its cities, counties, or other political subdivisions on account of race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry, or national origin. It is not anticipated that passage of this ballot measure would result in immediate increases in expenditures for the State or local governments. However, it is not possible to predict whether the future application of Question 1 will require additional fiscal resources by the State or local governments. Therefore, any potential financial impacts on the State or local governments relating to the application of Question 1 cannot be determined with any reasonable degree of certainty.

### FULL TEXT OF THE MEASURE

Senate Joint Resolution No. 8—Senators Cannizzaro, Spearman, Ratti, Woodhouse, Parks; Brooks, Cancela, Denis, Dondero Loop, D. Harris, Ohrenschall and Scheible

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to guarantee equal rights.

#### Legislative Counsel’s Digest:

Existing law provides numerous prohibitions against discrimination on the basis of sex and other characteristics. (See, for example, NRS 62B.510, 217.420, 274.140, 281.370, 284.150, 288.270, 319.060, 338.125, 396.530, 463.151, 463.4076, 610.020, 610.150 and 613.330) This resolution proposes to amend the Nevada Constitution by adding a guarantee that equality of rights under the law shall not be denied or abridged by this State or any of its political subdivisions on account of race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry or national origin.

If this resolution is passed by the 2019 Legislature, it must also be passed by the next Legislature and then approved and ratified by the voters in an election before the proposed amendment to the Nevada Constitution becomes effective.

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

.....

WHEREAS, The Fourteenth Amendment to the United States Constitution prohibits any state from denying to any person within its jurisdiction the equal protection of the laws; and

WHEREAS, The Nevada Supreme Court has interpreted the requirement of Section 21 of Article 4 of the Nevada Constitution that “all laws shall be general and of uniform operation throughout the State” to be

coextensive with the guarantees of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and

WHEREAS, The generality of the language used in the Fourteenth Amendment to the United States Constitution and Section 21 of Article 4 of the Nevada Constitution has allowed the Judicial branches of the Federal and State governments to establish a hierarchy within the persons entitled to the protection of the laws; and

WHEREAS, The United States Supreme Court has recognized that each individual state may adopt its own constitution and provide its citizens more expansive individual liberties than those provided by the Federal Constitution; and

WHEREAS, The Legislature of this State wishes to strictly guarantee the equality of rights under law to certain persons within its jurisdiction; now, therefore, be it

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That a new section, designated Section 24, be added to Article 1 of the Nevada Constitution to read as follows:

*Sec. 24. Equality of rights under the law shall not be denied or abridged by this State or any of its political subdivisions on account of race, color, creed, sex, sexual orientation, gender identity or expression, age, disability, ancestry or national origin.*

## STATE QUESTION NO. 2

Amendment to the *Nevada Constitution*

Assembly Joint Resolution No. 10 of the 80<sup>th</sup> Session

### CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended, effective July 1, 2024, to: (1) establish the State’s minimum wage that employers must pay to certain employees at a rate of \$12 per hour worked, subject to any applicable increases above that \$12 rate provided by federal law or enacted by the Nevada Legislature; (2) remove the existing provisions setting different rates for the minimum wage based on whether the employer offers certain health benefits to such employees; and (3) remove the existing provisions for adjusting the minimum wage based on applicable increases in the cost of living?

Yes       No

### EXPLANATION & DIGEST

**EXPLANATION**—This ballot measure amends the *Nevada Constitution* to require that, beginning July 1, 2024, each employer must pay each employee to whom the minimum wage requirements apply (referred to as a “nonexempt employee”) a minimum wage of not less than \$12 per hour worked, subject to any applicable increases above \$12 per hour worked provided by federal law or enacted by the Legislature.

This ballot measure further removes from the *Nevada Constitution*, effective July 1, 2024, the existing provisions allowing an employer that offers certain health benefits to nonexempt employees to pay a minimum wage of \$1 per hour less than an employer that does not offer such health benefits to nonexempt employees.

This ballot measure also removes from the *Nevada Constitution*, effective July 1, 2024, the existing provisions adjusting the State’s minimum wage rates based on the greater of certain increases in the federal minimum wage or certain increases in the cost of living measured by percentage increases in the Consumer Price Index (CPI), with caps on the cost-of-living increases for the adjusted rates. However, this ballot measure requires the State’s minimum wage to be increased based on applicable increases in the federal minimum wage, providing that if, at any time, the federal minimum wage is greater than \$12 per hour worked, the State’s minimum wage is increased to the amount established for the federal minimum wage, unless the Legislature establishes, by state statute, a minimum wage that is greater than the federal minimum wage as permitted by federal law.

This ballot measure additionally expresses in the *Nevada Constitution* the existing authority of the Legislature to establish, by state statute, a minimum wage that is greater than the minimum hourly rate required by the *Nevada Constitution*.

If approved by the voters, this ballot measure supersedes any conflicting provisions in the State’s existing minimum wage statutes which, on July 1, 2024, require an employer to pay a minimum wage of \$11 per hour worked, if the employer offers certain health benefits to nonexempt employees, or \$12 per hour worked, if the employer does not offer such health benefits to nonexempt employees, unless the Legislature amends those existing statutes to conform to this ballot measure before that date.

**A “Yes” vote would, effective July 1, 2024: (1) add provisions in the *Nevada Constitution* establishing the State’s minimum wage that employers must pay to nonexempt employees at a rate of \$12 per hour worked, subject to any applicable increases above that \$12 rate provided by federal law or enacted by the Legislature; (2) remove the existing provisions in the *Nevada Constitution* setting different rates for the minimum wage based on whether the employer offers certain health benefits to such employees; and (3) remove the existing provisions in the *Nevada Constitution* for adjusting the minimum wage based on applicable increases in the cost of living, with caps on the cost-of-living increases for the adjusted rates.**

**A “No” vote would: (1) keep the State’s existing minimum wage, subject to any applicable increases or decreases provided by federal law or enacted by the Legislature; (2) keep the existing provisions in the *Nevada Constitution* setting different rates for the minimum wage based on whether the employer offers certain health benefits to nonexempt employees; and (3) keep the existing provisions in the *Nevada Constitution* for adjusting the minimum wage based on the greater of applicable increases in the federal minimum wage or applicable increases in the cost of living, with caps on the cost-of-living increases for the adjusted rates.**

**DIGEST**—The federal Fair Labor Standards Act (FLSA) requires employers to pay nonexempt employees a prescribed minimum wage for each hour of work. (29 U.S.C. § 206) However, the FLSA expressly authorizes states to establish a minimum wage which is higher than the minimum wage required under federal law. (29 U.S.C. § 218) If a nonexempt employee is subject to both the federal and state minimum wage laws, the employee is entitled to the higher of the two minimum wages. (29 U.S.C. § 218)

At the 2006 General Election, Nevada voters amended the *Nevada Constitution* to establish a two-tier minimum wage system whereby an employer that offers certain health benefits to nonexempt employees may pay a minimum wage of \$1 per hour less than an employer that does not offer such health benefits to nonexempt employees. The 2006 amendment to the *Nevada Constitution* required: (1) an employer to pay a minimum wage rate of \$5.15 per hour worked, if the employer offers certain health benefits to nonexempt employees, or a minimum wage rate of \$6.15 per hour worked, if the employer does not offer such health benefits to nonexempt employees; and (2) both minimum wage rates to be adjusted by the amount of any increase in the federal minimum wage over \$5.15 per hour or, if greater, by the cumulative increase

in the cost of living measured by percentage increases in the CPI, except that the CPI adjustment for any one-year period cannot exceed 3 percent. To offer health benefits for purposes of the 2006 amendment, an employer must make health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. (Nev. Const. Art. 15, §16)

Because federal law authorizes a state to establish a higher minimum wage than the federal minimum wage and nothing in the *Nevada Constitution* prohibits or limits the Legislature's authority to do so, the Legislature established the following minimum wage rates, effective July 1, 2019: (1) \$7.25 per hour worked, if the employer offered certain health benefits to nonexempt employees; or (2) \$8.25 per hour worked, if the employer did not offer such health benefits to nonexempt employees. The Legislature also provided for increases to these minimum wage rates of 75 cents per fiscal year for the next five fiscal years. Beginning July 1, 2024, unless amended by the Legislature before that date, the minimum wage rates established in existing statute will be \$11 per hour worked, if the employer offers certain health benefits to nonexempt employees, or \$12 per hour worked, if the employer does not offer such health benefits to nonexempt employees. (NRS 608.250)

This ballot measure amends the *Nevada Constitution*, effective July 1, 2024, to require an employer to pay nonexempt employees a minimum wage of \$12 per hour worked, subject to any applicable increases above \$12 per hour worked provided by federal law or enacted by the Legislature. This ballot measure also eliminates the two-tiered minimum wage system that is based on whether the employer offers certain health benefits to nonexempt employees. Because the State's existing statutory rates for the minimum wage are based on that two-tiered system, this ballot measure supersedes any conflicting statutory rates beginning on July 1, 2024, unless the Legislature amends such rates to conform to this ballot measure before that date. Therefore, this ballot measure requires an employer, effective July 1, 2024, to pay nonexempt employees a minimum wage of \$12 per hour worked, regardless of whether the employer offers certain health benefits to those nonexempt employees, subject to any applicable increases in the minimum wage above \$12 per hour worked provided by federal law or enacted by the Legislature.

This ballot measure also removes from the *Nevada Constitution*, effective July 1, 2024, the existing provisions for adjusting the minimum wage based on the greater of applicable increases in the federal minimum wage or applicable increases in the cost of living, with caps on the cost-of-living increases for the adjusted rates. However, this ballot measure provides that if, at any time, the federal minimum wage is greater than \$12 per hour worked, the State's minimum wage is increased to the amount established for the federal minimum wage, unless the Legislature establishes, by state statute, a minimum wage that is greater than the federal minimum wage as permitted by federal law.

Finally, this ballot measure expresses in the *Nevada Constitution* the existing authority of the Legislature to establish, by state statute, a minimum wage that is greater than the minimum hourly rate required by the *Nevada Constitution*.

## **ARGUMENTS FOR PASSAGE**

Nevada’s workers deserve a constitutionally guaranteed increase in the minimum wage. Approval of Question 2 will ensure that effective July 1, 2024, workers will be paid a minimum wage of \$12 per hour, which cannot be decreased by the Legislature but only increased above the \$12 per hour rate. Even though the Legislature passed a law in 2019 requiring annual increases in the minimum wage through July 1, 2024, any future Legislature may change that law and potentially lower the minimum wage. This ballot measure will constitutionally guarantee that Nevada’s minimum wage cannot be lowered below \$12 per hour based on the political mood of the day.

Approval of Question 2 will also eliminate the outdated and ineffective method for making cost-of-living adjustments in the minimum wage currently in the *Nevada Constitution*. Even though the *Nevada Constitution* currently provides for an annual adjustment in the minimum wage to compensate for certain increases in the cost of living, those annual adjustments are capped, and they have never kept up with the true cost of living for Nevada’s workers. In fact, it will take over a decade after July 1, 2024, for the cost-of-living adjustments currently provided by the *Nevada Constitution* to exceed the \$12 per hour minimum wage guaranteed by Question 2. Nevada’s workers should not have to wait for more than a decade for a constitutionally guaranteed minimum wage of \$12 per hour.

Finally, approval of Question 2 will eliminate the outdated and ineffective two-tiered minimum wage system currently in the *Nevada Constitution* that allows employers to lower their minimum wage by \$1 per hour just for offering certain health benefits to employees and their dependents, even when the employees reject the health benefits being offered. Nevada’s workers should not be penalized with a lower minimum wage solely because their employers offer certain health benefits, especially when those health benefits are rejected because workers can secure better or more cost-effective health benefits from alternative sources, such as a health insurance exchange. Nevada is the only state to have such a complicated and unfair two-tiered minimum wage system. It is time to eliminate that undesirable system from the *Nevada Constitution* and constitutionally guarantee a minimum wage of \$12 per hour for Nevada’s workers, regardless of whether their employers offer any health benefits.

It is time to update the minimum wage to better serve Nevadans. Vote “Yes” on Question 2.

## **ARGUMENTS AGAINST PASSAGE**

Question 2 is an unnecessary change to the *Nevada Constitution* because the Legislature already has the authority to enact statutory increases in the minimum wage, and it has done so. In 2019, after receiving input from both workers and employers, the Legislature passed a law requiring annual increases in the minimum wage through July 1, 2024, when the statutory minimum wage will be set at \$11 per hour, if the employer offers certain health benefits, or \$12 per hour, if the employer does not offer certain health benefits. There is no need to establish the minimum wage

at \$12 per hour in the *Nevada Constitution* when the Legislature already has enacted an increased statutory minimum wage and has the authority to enact additional increases in the statutory minimum wage above the \$12 per hour proposed by Question 2.

Approval of Question 2 will also harm Nevada’s workers because it sets the minimum wage at \$12 per hour in the *Nevada Constitution* without providing any method for making cost-of-living adjustments in the minimum wage as currently provided by the *Nevada Constitution*. Although the Legislature has established the statutory minimum wage at a higher rate than currently required by the *Nevada Constitution*, the existing method in the *Nevada Constitution* for making cost-of-living adjustments in the minimum wage ensures that the minimum wage will eventually increase above \$12 per hour given that increases in the cost of living will continue to occur. Because this ballot measure will remove the existing method for making cost-of-living adjustments from the *Nevada Constitution* and will not require any form of cost-of-living adjustments in the minimum wage, approval of Question 2 will harm Nevada’s workers by removing an important constitutional safeguard against the ever-increasing cost of living for Nevada’s workers.

Finally, approval of Question 2 will harm Nevada’s workers and employers by removing the existing incentive in the *Nevada Constitution* that encourages employers to offer certain health benefits to employees and their dependents in exchange for lowering the employees’ minimum wage by \$1 per hour. Because health benefits offered by employers may be the best source of affordable health benefits for some employees and their dependents, the existing incentive in the *Nevada Constitution* encourages employers to continue offering those benefits to employees and their dependents, thereby ensuring access to affordable health care. Because this ballot measure will remove the existing incentive from the *Nevada Constitution* and discourage employers from continuing to offer such health benefits, approval of Question 2 will harm the employers that have relied on the existing incentive to conduct their businesses, along with the employees who have relied on the health benefits to cover themselves and their dependents.

Question 2 is an unnecessary change to the *Nevada Constitution* that will harm Nevada’s workers and employers. Vote “No” on Question 2.

## FISCAL NOTE

### **Financial Impact—Cannot be Determined**

Under the current constitutional and statutory provisions for the State’s minimum wage, employers, including the State and local governments, are required to pay nonexempt employees, effective July 1, 2024, a minimum wage rate of \$11 per hour, if certain health benefits are offered, or \$12 per hour, if certain health benefits are not offered. The provisions of Question 2 would replace these existing provisions with a constitutional requirement that employers, including the State and local governments, pay nonexempt employees, effective July 1, 2024, a minimum wage

rate of \$12 per hour, regardless of whether the employers offered certain health benefits to employees and their dependents.

The provisions of this ballot measure would directly affect only those employers, including the State and local governments, that would be paying nonexempt employees on July 1, 2024, less than \$12 per hour under the existing statutory minimum wage because those employers offered certain health benefits to employees and their dependents. It is unknown whether any employers, including the State and local governments, would be paying any nonexempt employees on July 1, 2024, less than \$12 per hour under the existing statutory minimum wage and, thereafter, would be required to pay the \$12 per hour minimum wage if the provisions of Question 2 become effective.

Additionally, it is unknown what impact, if any, there may be on the wages paid by employers, including the State and local governments, to employees who are not directly affected by the minimum wage provisions of Question 2. It is also unknown what impact, if any, may result to the health benefits offered or provided by employers based on the elimination of the existing constitutional provisions allowing a \$1 lower minimum wage if employers offered certain health benefits to employees and their dependents.

Thus, if Question 2 is approved, the fiscal impact on the State and local governments related to any wages and health benefits that will be provided to nonexempt employees on or after July 1, 2024, cannot be determined with any reasonable degree of certainty. Additionally, it is not possible to predict the impact, if any, that Question 2 would have on the wages that employers, other than the State and local governments, will pay to their nonexempt employees on or after July 1, 2024, or on the health benefits that these employees may or may not obtain on or after July 1, 2024. Therefore, the impact, if any, that Question 2 would have on certain taxes deposited in the State General Fund cannot be determined with any reasonable degree of certainty, including: (1) the Modified Business Tax, which is paid by an employer based on the amount of quarterly wages, less allowable health care expenses, paid to employees; and (2) the Insurance Premium Tax, which is paid by insurance companies based on the total net premiums written in this State.

## **FULL TEXT OF THE MEASURE**

ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada Constitution to prospectively increase the required minimum wage paid to employees.

### **Legislative Counsel’s Digest:**

Section 16 of Article 15 of the Nevada Constitution requires private employers to pay a minimum wage of \$5.15 per hour if the employer provides certain health benefits to employees or \$6.15 per hour if the employer does not provide such health benefits to employees. The Constitution also requires the minimum wage to be adjusted each year by the amount of any increase in the federal minimum wage over \$5.15 per hour or, if greater, by the cumulative increase in the cost of living measured by the Consumer Price Index (CPI), except that the CPI adjustment for any 1-year period cannot exceed 3 percent. (Nev.



Const. Art. 15, §16) This joint resolution proposes to amend the Nevada Constitution to instead set the minimum wage at \$12 per hour worked beginning July 1, 2024, regardless of whether the employer provides health benefits to employees. In addition, this joint resolution removes the annual adjustment to the minimum wage and instead provides that if at any time the federal minimum wage is greater than \$12 per hour worked, the minimum wage is increased to the amount established for the federal minimum wage. In addition, this joint resolution allows the Legislature to establish a minimum wage that is greater than the hourly rate set forth in the Constitution.

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

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That Section 16 of Article 15 of the Nevada Constitution be amended to read as follows:

Sec. 16. Payment of minimum compensation to employees.

~~[A. Each]~~

*1. Except as otherwise provided in this section, beginning July 1, 2024, each* employer shall pay a wage to each employee of not less than ~~[the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents (\$5.15)]~~ *twelve dollars (\$12)* per hour worked. ~~[, if the employer provides health benefits as described herein, or six dollars and fifteen cents (\$6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. These rates of wages shall be adjusted by the amount of increases in]~~

*2. If, at any time, the amount of the* federal minimum wage ~~[over \$5.15 per hour, or, if greater, by the cumulative increase in the cost of living. The cost of living increase shall be measured by the percentage increase as of December 31 in any year over the level as of December 31, 2004 of the Consumer Price Index (All Urban Consumers, U.S. City Average) as published by the Bureau of Labor Statistics, U.S. Department of Labor or the successor index or federal agency. No CPI adjustment for any one-year period may be greater than 3%. The Governor or the State agency designated by the Governor shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect the following July 1. Such bulletin will be made available to all employers and to any other person who has filed with the Governor or the designated agency a request to receive such notice but lack of notice shall not excuse noncompliance with this section. An employer shall provide written notification of the rate adjustments to each of its employees and make the necessary payroll adjustments by July 1 following the publication of the bulletin.]~~ *is greater than twelve dollars (\$12) per hour worked, each employer must pay a wage to each employee of not less than the hourly rate established for the federal minimum wage.*

*3. The Legislature may establish by law a minimum wage that an employer must pay to each employee that is greater than the hourly rate required by this section.*

*4. Tips or gratuities received by employees shall not be credited as being any part of or offset against the wage rates required by this section.*

~~[B. The]~~

*5. Except as otherwise provided in this section, the* provisions of this section may not be waived by agreement between an ~~[individual]~~ employee and ~~[an]~~ *his or her* employer. All of the provisions of this section, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this section.

6. An employer shall not , *in any manner*, discharge, reduce the compensation of or otherwise discriminate against any employee for using any civil remedies to enforce this section or otherwise asserting his or her rights under this section.

7. An employee claiming violation of this section ~~may~~ *is entitled to* bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney's fees and costs.

~~C.~~ 8. As used in this section ~~["employee"]~~ :

(a) *"Employee"* means any person who is employed by an employer as defined herein but does not include an employee who is under eighteen (18) years of age, employed by a nonprofit organization for after school or summer employment or as a trainee for a period not longer than ninety (90) days.

(b) "Employer" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts of employment.

~~D.~~ 9. If any provision of this section is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining sections or portions of the sections of this section.

And be it further

Resolved, That this resolution becomes effective on July 1, 2024.

### STATE QUESTION NO. 3

Amendment to the *Nevada Constitution*

#### CONDENSATION (Ballot Question)

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).*

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<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.

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

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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/19AKBEStatementOfCosts.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 false and 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.

*The above rebuttal 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).

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<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> 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>3</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>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

## FULL TEXT OF THE MEASURE

### BETTER VOTING NEVADA INITIATIVE

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

**The People of the State of Nevada do enact as follows:**

**Section 1.** Article 5, Section 4 of the Nevada Constitution is hereby amended to read as follows:

Section 4. Returns of general election transmitted to secretary of state; canvass by supreme court; declaration of election. The returns of every election for United States senator and member of Congress, district and state officers, and for and against any questions submitted to the electors of the State of Nevada, voted for at the general election, shall be sealed up and transmitted to the seat of government, directed to the secretary of state, and the chief justice of the supreme court, and the associate justices, or a majority thereof, shall meet at the office of the secretary of state, on a day to be fixed by law, and open and canvass the election returns for United States senator and member of Congress, district and state officers, and for and against any questions submitted to the electors of the State of Nevada, and forthwith declare the result and publish the names of the persons elected and the results of the vote cast upon any question submitted to the electors of the State of Nevada. The persons having the highest number of votes for the respective offices *as provided for and governed by Nevada law and/or Section 18 of Article 15 of this Constitution* shall be declared elected. ~~[, but in case any two or more have an equal and the highest number of votes for the same office, the legislature shall, by joint vote of both houses, elect one of said persons to fill said office.]~~

**Section 2.** Article 15, Section 14 of the Nevada Constitution is hereby amended to read as follows:

Sec: 14. Election by plurality. A plurality of votes given at an election by the people, shall constitute a choice, *except as provided in Section 18 of Article 15 or* where not otherwise provided by this Constitution.

**Section 3.** Article 15 of the Nevada Constitution is hereby amended by adding thereto a new section to be designated as Section 17, to read as follows:

*Section 17. Top-five primary elections for partisan office.*

- 1. Primary elections for partisan office shall be conducted as follows:
  - a. The primary election for partisan offices must be held on the date and time as provided by Nevada law.*
  - b. A person may become a candidate at the primary election for partisan office regardless of the person's affiliation with a political party, or lack thereof.*
  - c. Any registered voter may cast a primary ballot for any candidate for partisan office regardless of the political party affiliation of the voter or any political party preference indicated by the candidate. The primary election for partisan office does not serve to determine the nominee of a political party or political group but serves only to narrow the number of candidates whose names will appear on the ballot at the general election for partisan office.**
- 2. At a primary election for partisan office, only the names of the five candidates receiving the greatest number of votes at the primary election shall advance to the general election for partisan office. If, however, there are five or fewer candidates for a specific partisan office, the primary election for partisan office will still be held and the results made public, and all must be declared the candidates for the general election.*
- 3. In the event of a tie for fifth place, the candidate who proceeds to the general election for partisan office will be decided by lot.*
- 4. The ballot for the primary election must clearly delineate the partisan offices to which the top-five process provided by this section applies.*
- 5. Immediately following the name of each candidate for a partisan office must appear the name or abbreviation of the political party with which the candidate is registered, the words "no political party" or the abbreviation "NPP," as the case may be.*
- 6. The ballots for the primary elections for partisan office must include a conspicuously placed statement: "A candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."*
- 7. In the event that one of the five candidates who received the greatest number of votes at the primary election withdraws, is disqualified, dies, or is otherwise deemed ineligible to be elected after the primary election for partisan office but*

*before the 5 p.m. on the fourth Friday in July, the candidate receiving the next greatest number of votes at the primary election for partisan office shall be declared a nominee, and his or her name shall be placed on the ballot at the general election for partisan office.*

8. *As used in this section:*

*“Partisan office” means the Offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and State Legislators, and excludes the Offices of President of the United States and Vice President of the United States.*

9. *Implementation*

- a. *Not later than July 1, 2025, the Legislature shall provide by law for provisions consistent with Section 17 of Article 15 of this Constitution to require top-five primary elections for partisan office.*
- b. *Upon enactment of any law by the Legislature pursuant to Section 17 of Article 15 of this Constitution before July 1, 2025, and not later than that date, any laws, regulations, regulatory orders or other provisions which conflict with Section 17 of Article 15 of this Constitution will be void. However, the Legislature may enact legislation, in whole or in part, consistent with Section 17 of Article 15 of this Constitution that to provide top-five primary elections for partisan office before July 1, 2025.*

**Section 4.** Article 15 of the Nevada Constitution is hereby amended by adding thereto a new section to be designated as Section 18, to read as follows:

**Section 18.** *Ranked-choice voting for general elections for partisan office.*

1. *All general elections for partisan office shall be conducted by ranked-choice voting.*
2. *The general election ballots for partisan office shall be designed so that the candidates are selected by ranked-choice voting.*
3. *The general election ballots for partisan office shall be designed so that the voter is directed to mark candidates in order of preference and to mark as many choices as the voter wishes, but not to assign the same ranking to more than one candidate for the same office.*
4. *Immediately following the name of each candidate for a partisan office must appear the name or abbreviation the political party with which the candidate is registered, the words “no political party” or the abbreviation “NPP,” as the case may be.*
5. *The ballots for the general elections for partisan office must include a conspicuously placed statement that: “Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not*

*imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate.”*

6. *When counting ballots in a general election for partisan office, the Registrar, County Clerk, or chief election official (as applicable) in each County shall initially tabulate each validly cast ballot as one vote for the highest-ranked candidate on that ballot or as an inactive ballot. If a candidate is highest-ranked on a majority of the active ballots, that candidate is elected and the tabulation is complete. If no candidate is highest-ranked on a majority of the active ballots, tabulation proceeds in sequential rounds as outlined in Section 7.*
7. *Tabulation proceeds in sequential rounds as follows:*
  - a. *If two or fewer continuing candidates remain, the candidate with the greatest number of votes is elected and the tabulation is complete; otherwise, the tabulation continues under (b) of this subsection.*
  - b. *The candidate with the fewest votes is eliminated, votes cast for the eliminated candidate shall cease counting for the eliminated candidate and shall be added to the totals of each ballot's next-highest-ranked continuing candidate or considered an inactive ballot under (8)(b) and (8)(c) of this section, and a new round begins under (7)(a) of this subsection.*
8. *When counting general election ballots for partisan office,*
  - a. *A voter may choose to rank just one candidate for partisan office, and that vote will be tabulated.*
  - b. *A ballot containing an overvote shall be considered an inactive ballot once the overvote is encountered at the highest ranking for a continuing candidate.*
  - c. *If a ballot skips a ranking, then the election board shall count the next ranking. If the next ranking is another skipped ranking, the ballot shall be considered an inactive ballot for that race.*
  - d. *Any votes for “None of These Candidates” shall be tabulated, recorded, and made public, but not be counted for the purpose of electing or ranking any candidates for partisan office.*
  - e. *In the event of a tie between the final two continuing candidates, the winner shall be decided in a manner as provided by statute.*
  - f. *In the event of a tie between two candidates with the fewest votes, the candidate eliminated shall be decided by lot.*
  - g. *An inactive ballot may not be counted for any candidate in that particular race.*
9. *As used in this section:*
  - a. *“Continuing candidate” means a candidate who has not been eliminated.*
  - b. *“Inactive ballot” means a ballot that is no longer tabulated, either in whole or in part, because it does not rank any continuing candidate, contains an overvote at the highest continuing ranking, or contains two or more sequential skipped rankings before its highest continuing ranking.*
  - c. *“Overvote” means an instance where a voter has assigned the same*



- ranking to more than one candidate.*
- d. "Ranking" or "ranked" means the number assigned by a voter to a candidate to express the voter's choice for that candidate; a ranking of "1" is the highest ranking, followed by "2," and then "3," and so on.*
  - e. "Round" means an instance of the sequence of voting tabulation in a general election for partisan office.*
  - f. "Skipped ranking" means a blank ranking on a ballot on which a voter has ranked another candidate at a subsequent ranking.*
  - g. "Partisan office" means the Offices of United States Senator, United States Representative, Governor, Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Controller, and State Legislators, and excludes the Offices of President of the United States and Vice President of the United States.*
- 10. Completion of ballot count; certificate.*
- a. The certification of results shall be conducted as provided by Nevada law.*
- 11. Implementation*
- a. Not later than July 1, 2025, the Legislature shall provide by law for provisions consistent with this constitutional amendment, including providing for disclosure as to the full ranking of each candidate.*
  - b. Upon enactment of any law by the Legislature pursuant to this constitutional amendment before July 1, 2025, and not later than that date, any laws, regulations, regulatory orders or other provisions which conflict with this constitutional amendment will be void. However, the Legislature may enact legislation, in whole or in part, consistent with this constitutional amendment before July 1, 2025.*

**Section 5. Severability.** If any provision of this act, or the application therefore to any person, thing or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.