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STATE QUESTION NUM. 1

Amendment to the Nevada Constitution

Senate Joint Resolution No. 7 of the 81st Session

Shall the *Nevada Constitution* be amended to remove certain provisions governing the Board of Regents of the Nevada System of Higher Education and its administration of the State University and certain federal land grant funds and to provide additional legislative oversight of public institutions of higher education through regular independent audits, without repealing the current statutory election process or other existing statutory provisions relating to the Board of Regents?

Yes

No

EXPLANATION & DIGEST

EXPLANATION— The *Nevada Constitution* requires the Legislature to provide for the establishment of a State University that is controlled by an elected Board of Regents whose duties are prescribed by law. Additionally, the *Nevada Constitution* provides for the Board of Regents to control and manage the affairs and funds of the State University under regulations established by law. This ballot measure, also known as “The Nevada Higher Education Reform, Accountability and Oversight Amendment,” would remove the constitutional provisions governing the election and duties of the Board of Regents and its control and management of the affairs and funds of the State University and would require the Legislature to provide by law for the governance of the State University and for the auditing of public higher education institutions in Nevada. This ballot measure would not repeal any existing statutory provisions governing the Board of Regents, including those that provide for the election of Board members, but it would make the Board a statutory body whose structure, membership, powers and duties are governed by those existing statutory provisions, subject to any statutory changes made through the legislative process.

The *Nevada Constitution* provides that certain funding derived by the State of Nevada under a federal law enacted by the United States Congress in 1862 must be invested in a separate fund and dedicated for the benefit of certain departments of the State University, and that if any amount of the separate fund is lost or misappropriated through neglect or any other reason, the State of Nevada must replace the lost or misappropriated amount so that the principal of the fund remains undiminished. This ballot measure would revise these provisions by: (1) clarifying the legal citations to the federal law, including all amendments by Congress; and (2) specifying that the funding derived under the federal law must be invested by the State of Nevada in the manner required by law.

A “Yes” vote would amend the *Nevada Constitution* by: (1) removing provisions governing the election and duties of the Board of Regents and its control and management of the affairs and funds of the State University and requiring the Legislature to provide by law for the governance of the State University and for the auditing of public higher education institutions in Nevada; and (2) revising provisions governing the administration of certain funding derived under federal law and dedicated for the benefit of certain departments of the State University.

A “No” vote would retain existing provisions of the *Nevada Constitution* governing the election and duties of the Board of Regents and its control and management of the affairs and funds of the State University and would not revise existing provisions governing the administration of certain funding derived under federal law and dedicated for the benefit of certain departments of the State University.

DIGEST—The *Nevada Constitution* requires the Legislature to provide for the establishment of a State University that is controlled by a Board of Regents whose duties are prescribed by statute. (Nev. Const. Art. 11, § 4) The *Nevada Constitution* also requires the Legislature to provide for the election of members of the Board and provides for the Board to control and manage the affairs and funds of the State University under regulations established by law. (Nev. Const. Art. 11, §§ 7, 8)

As required by these constitutional provisions, the Legislature has enacted laws to establish the State University and to provide for the election of the members of the Board of Regents. (*Nevada Revised Statutes* [NRS] 396.020, 396.040) In addition, the Legislature has enacted laws to: (1) establish the Nevada System of Higher Education (NSHE), which consists of the State University and certain other educational institutions, programs and operations; and (2) provide for the Board of Regents to administer NSHE and to prescribe rules for its governance and management. (NRS 396.020, 396.110, 396.230, 396.280, 396.300, 396.420, 396.440, 396.550)

This ballot measure would remove the constitutional provisions governing the Board of Regents and would require the Legislature to provide by statute for the governance of the State University and for the auditing of public higher education institutions. This ballot measure would not repeal any existing statutory provisions governing the Board of Regents, including those that provide for the election of Board members. Rather, by removing the constitutional provisions governing the Board of Regents, this ballot measure would make the Board a statutory body whose structure, membership, powers and duties are governed by those existing statutory provisions, subject to any statutory changes made through the legislative process.

Under the federal Morrill Land Grant Act of 1862, each state was provided with certain federal land grants to be sold to support and maintain at least one college in the state that teaches both agriculture and mechanic arts, including military tactics, so long as the state agrees to certain terms and conditions regarding the preservation and use of the proceeds derived from the sale of the federal land grants. (Act of July 2, 1862, ch. 130, §§ 1 8, 12 Stat. 503-05, as amended and codified at 7 U.S.C. §§ 301 et seq.) To secure the benefits offered by the federal law, the *Nevada Constitution* provides that the funding derived by the State of

Nevada under the federal law must be invested in a separate fund and dedicated for the benefit of the appropriate departments of the State University, and that if any amount of the separate fund is lost or misappropriated through neglect or any other reason, the State of Nevada must replace the lost or misappropriated amount. (Nev. Const. Art. 11, § 8) This ballot measure would revise these provisions by: (1) clarifying the legal citations to the federal law, including all amendments by Congress; and (2) specifying that the funding derived under the federal law must be invested by the State of Nevada in the manner required by law. However, because the State of Nevada must administer the funding in the manner required by the federal law, this ballot measure would not change the purpose or use of the funding under the federal law. (*State of Wyoming v. Irvine*, 206 U.S. 278, 282-84 (1907))

ARGUMENTS FOR PASSAGE

Voting in favor of Question 1 will allow for additional legislative oversight and accountability of the Board of Regents to improve public higher education in Nevada. Question 1 would mandate that the Legislature provide for the governance of the State University, giving the Legislature the ability to change the policies and procedures of the Nevada System of Higher Education (NSHE) to be more responsive to the higher education needs of the State.

For years, the Legislature has received complaints about the Board's policies and practices, and the Board has taken actions that have obstructed or undermined the Legislature's investigation and review of NSHE. The Board's actions have also led to controversies around the failure of the Board to hold NSHE and its colleges and universities to high standards of transparency and accountability and failed searches for Board leadership. Passage of Question 1 would enable the Legislature to address concerns surrounding the Board and its members by changing any of the Board's policies and procedures.

In addition, taxpayers and students will ultimately benefit from greater legislative oversight of the Board's financial decisions by reducing the potential for further fiscal mismanagement within NSHE. A recent audit of NSHE found that due to vague or insufficient Board policies and a lack of systemwide oversight, NSHE institutions engaged in questionable and inappropriate financial activities between 2018 and 2022, including moving state funds between accounts designated for different purposes, redirecting state funds to a different institution without legislative approval, taking action to avoid returning unused funds to the State as required by law, and spending student fees in ways that do not directly relate to the fees' purposes or enhance the education of the students who pay them. Question 1 will require an audit of NSHE every two years, improving accountability and transparency in the fiscal management of NSHE.

The framers of the *Nevada Constitution* never intended for the Board to have absolute control over the management of the State University. Granting constitutional powers to the Board was simply related to accessing federal land grant funding without requiring action by the Legislature. However, the Board has asserted in cases before the Nevada Supreme Court that its constitutional status gives it virtual autonomy and thus immunity from certain laws and policies enacted by the Legislature. Based on legislative testimony, there is an impression that the Board uses its constitutional status as a shield against additional legislative oversight

and accountability and even conducts itself as a fourth branch of government though the *Nevada Constitution* specifies only the Executive, Legislative, and Judicial Branches of State government. Passage of Question 1 will prevent the Board from using its current constitutional status to protect NSHE from legislative scrutiny.

Improve our public higher education system by allowing for greater accountability, transparency and oversight of the system. Vote “Yes” on Question 1.

ARGUMENTS AGAINST PASSAGE

Proponents of Question 1 want voters to believe that the framers of the *Nevada Constitution* got it wrong, and that the Legislature’s involvement will somehow improve the transparency, efficiency and effectiveness of Nevada’s higher education system. Unfortunately, passage of this ballot question does not guarantee any of these promised benefits. Question 1 is nothing but the Legislature trying to gain more power and control, and it would only serve to add political pressures to a governance system that is serving this State well. Previous attempts to change higher education governance, including a similar 2020 ballot question to remove the constitutional status of the Board of Regents, have failed because Nevadans recognize the importance of keeping the system in the *Nevada Constitution* as originally drafted.

Academic freedom is under unprecedented attack around the country. The ability to independently pursue research that benefits the State or to retain expert faculty may be jeopardized with increased legislative influence in higher education. By removing the constitutional status of the Board of Regents from the *Nevada Constitution*, Question 1 increases the potential for political interference over curriculum and academic standards in our public colleges and universities.

The Board of Regents is best equipped to establish policy for the Nevada System of Higher Education (NSHE) because its sole focus is on higher education. The Board has governed our higher education system for over 150 years as the system has grown in size, prestige, and complexity, and in that time, outcomes have improved. It does not make sense to risk losing the Board’s independence, institutional knowledge, and expertise with no assurance of what the Legislature may put in its place. Furthermore, there is no evidence that the Legislature, which meets only once every other year, would be more effective at establishing higher education policy than the elected Regents.

The Board is already subject to considerable legislative oversight and accountability. For example, the Legislature recently passed legislation to alter the Board’s composition from 13 to 9 members and reduce member terms from six to four years. The Board must also explain and justify its financial management decisions to the Legislature and the Legislature retains the ultimate power of the purse to determine the amount of state funding for higher education. Finally, the Legislature already has the ability to require audits of NSHE as evidenced by the Legislature’s recent audit of NSHE. Because the Legislature has demonstrated its ability to oversee the Board and hold it accountable, the constitutional requirement for audits and the removal of the constitutional status of the Board are not necessary.

The Board's current status in the *Nevada Constitution* ensures that the Board remains elected, responsible to the voters, and responsive to constituents. Passage of Question 1 would allow the Legislature to change existing higher education policies and procedures and even allow the Legislature to make members of the Board appointed rather than elected.

Keep the status and election of the Board of Regents in the *Nevada Constitution*. Vote "No" on Question 1.

FISCAL NOTE

Financial Impact—Cannot Be Determined

If approved by the voters, Question 1 removes provisions governing the election and duties of the Board of Regents and its control and management of the affairs and funds of the State University from the *Nevada Constitution* and requires the Legislature to provide by law for the governance of the State University and for the auditing of public higher education institutions in Nevada.

Future actions, if any, taken by the Legislature regarding the governance of the State University cannot be predicted. Thus, the resulting financial impact upon State government, if any, cannot be determined with any reasonable degree of certainty.

The provisions of Question 1 requiring the Legislature to provide for biennial auditing of the State University and other public institutions of higher education in Nevada will have a financial effect upon the State government. However, because it is unknown what factors the Legislature may use in determining the scope of each biennial audit, the resultant cost to the State to pay for these audits cannot be determined with any reasonable degree of certainty.

Finally, this ballot question clarifies existing provisions of the *Nevada Constitution* relating to the administration of the federal land grant proceeds dedicated for the benefit of certain departments of the State University under the federal Morrill Land Grant Act of 1862. However, because the State of Nevada must administer those proceeds in the manner required by the federal law, this ballot question will not change the purpose or use of those proceeds under the federal law. Thus, there is no anticipated financial impact upon State government from these revisions if Question 1 is approved by the voters.