

QUESTION NO. _____

Amendment to the *Nevada Constitution*
Assembly Joint Resolution No. 3 of the 71st Session

CONDENSATION (ballot question)

Shall the *Nevada Constitution* be amended to change the provision that prohibits an “idiot or insane person” from voting to refer instead to “a person who has been adjudicated mentally incompetent, unless restored to legal capacity” and to repeal a provision relating to the election of United States Senators by the Legislature that was made obsolete by the adoption of the 17th Amendment to the *United States Constitution*?

Yes No

EXPLANATION

Currently, the *Nevada Constitution* provides that no “idiot or insane person” shall be entitled to vote in Nevada. The proposed amendment would change this language to provide that no person “who has been adjudicated mentally incompetent, unless restored to legal capacity,” shall be entitled to vote in Nevada. A “Yes” vote is a vote to remove language from Section 1, Article 2 of the *Nevada Constitution* referring to an idiot or insane person and replace it with language referring to persons who have been adjudicated mentally incompetent and not restored to legal capacity. A “No” vote is a vote to allow the language of this provision to remain unchanged.

Section 34, Article 4 of the *Nevada Constitution* provides that the Legislature shall elect Nevada’s United States Senators in joint convention of both Houses of the Legislature. This section also states that a vacancy in the office of United States Senator must be filled by the Legislature in a joint convention. The provision was nullified in 1913 with the adoption of the 17th Amendment to the *United States Constitution*, which provides for the direct, popular election of United States Senators and the filling of vacancies in the office of United States Senator through a vote of the people. A “Yes” vote is a vote to repeal this provision. A “No” vote is a vote to allow the language of this provision to remain unchanged.

ARGUMENTS FOR PASSAGE

The use of the terms “idiot” and “insane” is inaccurate and archaic and may be offensive to those individuals suffering from a brain disorder or mental illness. This terminology is no longer recognized in modern legal and medical contexts. Other States have removed this language from their Constitutions.

The second part of the question concerns the election of United States Senators through joint convention of the Legislature. This provision in the *Nevada Constitution* is obsolete because the election and replacement of United States Senators by direct, popular election is provided for in the 17th Amendment to the *United States Constitution*. This provision in the *Nevada Constitution* should be removed because it is erroneous and confusing.

ARGUMENTS AGAINST PASSAGE

Amendment of the *Nevada Constitution* should be a rare undertaking and constitutional language should not be changed simply to respond to uses of terminology which may be outdated or go in and out of favor over time. Although the use of the terms “idiot” and “insane” could be seen as objectionable by modern standards, the use of this language was nevertheless acceptable at the time the provision was written, and the meaning of these terms is still clear. A change to this provision may also result in the State creating a legal classification of “mentally incompetent” for the purpose of voting. This legal classification could apply to persons whose mental conditions do not affect their ability to vote.

Although the *Nevada Constitution* provides for a different method of electing United States Senators, the direct, popular vote of United States Senators pursuant to the 17th Amendment to the *United States Constitution* has occurred since 1913. There is no need to repeal Section 34, Article 4 of the *Nevada Constitution* because that provision is obviously superseded by the 17th Amendment to the *United States Constitution*.

FISCAL NOTE

Financial Impact – No.

The proposal to amend the *Nevada Constitution* would revise the terminology of certain provisions governing the right to vote and repeal provisions concerning the election of United States Senators by the Legislature. Approval of this proposal would have no adverse fiscal impact.

Voting Ballot Question (AJR 3-71st Session)-May 19, 2004