State of Nevada

Statewide

Ballot Questions

2010

To Appear on the November 2, 2010 General Election Ballot
QUESTION NO. 1

Amendment to the Nevada Constitution

Senate Joint Resolution No. 2 of the 74th Session

CONDENSATION (Ballot Question)

Shall the Nevada Constitution be amended to provide for the appointment of Supreme Court justices and District Court judges by the Governor for their initial terms from lists of candidates nominated by the Commission on Judicial Selection, with subsequent retention of those justices and judges after independent performance evaluations and voter approval?

Yes ☐

No ☑

285,746 Votes (42.26%) 390,370 Votes (57.74%)

EXPLANATION

Currently, the Nevada Constitution provides for the election of Supreme Court justices and District Court judges in Nevada to 6-year terms. When a vacancy occurs between elections, the Governor appoints a justice or judge from a list of candidates recommended by the Commission on Judicial Selection. The Commission consists of the Chief Justice of the Nevada Supreme Court and equal numbers of attorneys and non-attorneys.

The proposed amendment to the Nevada Constitution would provide for the initial appointment of all Supreme Court justices and District Court judges through the same process currently used to fill midterm vacancies. When any vacancy occurs, the Commission on Judicial Selection would nominate a list of candidates based on their experience and qualifications, and provide the nominees’ names to the Governor and the public. The Governor would then appoint one of the nominees. After being appointed by the Governor, justices and judges will initially serve terms that expire in January following the next general election which occurs at least 12 months after appointment.

Justices and judges seeking another term would be evaluated based on their record by the newly created Commission on Judicial Performance, which would consist of the Chief Justice of the Nevada Supreme Court and equal numbers of attorneys and non-attorneys. A summary of the Commission’s evaluation would be made available to the public at least 6 weeks before the general election. The names of all justices and judges seeking another term would appear on the ballot, and voters would decide whether justices and judges should serve another term. Justices and judges need 55 percent of the vote to be retained. If retained by the voters, a justice or judge will serve a 6-year term and will be subject to another evaluation and election at the end of each subsequent 6-year term if he or she wishes to serve another term. If a justice or judge does not declare his or her candidacy or receives less than 55 percent of the votes cast at the election, the vacancy is again filled through the appointment process.
This question also increases the number of members on the Commission on Judicial Selection by adding an additional attorney and a non-attorney and provides for the membership of the new Commission on Judicial Performance.

A “Yes” vote would amend the language in the *Nevada Constitution* to allow for the appointment of Supreme Court justices and District Court judges by the Governor for their initial terms from lists of candidates nominated by the Commission on Judicial Selection, with subsequent retention of those justices and judges after independent performance evaluations by the Commission on Judicial Performance and voter approval.

A “No” vote would retain the existing language in the *Nevada Constitution* that Supreme Court justices and District Court judges in Nevada must be elected except for those who are first appointed to fill vacancies and then stand for election.

**ARGUMENTS FOR PASSAGE**

A fair and independent judiciary is essential to maintaining the public trust and confidence in Nevada’s court system and preserving the rights of all citizens. Justices and judges are not intended to be politicians, yet they are required to campaign and engage in fundraising. The extent to which they are able to impartially interpret and apply laws depends upon their ability to remain free from political pressure and outside influence from campaign contributors.

In recent years, judicial campaigns have been characterized by increased fundraising and spending. Thus, elections may be based on a candidate’s ability to raise funds rather than the merits of the candidate’s legal career or judicial performance.

Justices and judges in the State of Nevada are allowed to solicit money directly from campaign contributors and are not required to recuse themselves or give notice when a campaign contributor appears before them in court. Typical contributors to judicial campaigns include attorneys, law firms, litigants, potential litigants, and special interest groups who may have pending legal cases. In addition, justices and judges who are subject to political campaigns cannot focus their full attention on their judicial responsibilities.

The appointment and retention of justices and judges based on merit rather than the ability to mount a successful political campaign would remove them from partisan politics while maintaining the people’s ability to vote whether to retain or remove a justice or judge. Further, merit selection will give full consideration to the ability, character, and qualifications of a judicial candidate before his or her name is placed on the ballot for retention, and will allow voters to focus on the candidate’s judicial record when casting their ballots.

At present, several states across the nation have adopted a nominating plan like this one for the appointment of judges to initial terms on the bench, and many also hold retention elections at the expiration of a judge’s term. In 1976, the people of Nevada approved an amendment to the *Nevada Constitution* that provides for the Commission on Judicial Selection to make recommendations for filling midterm
vacancies at the Supreme Court and District Court levels. Thus, appointments to the bench are not new in Nevada and already involve a rigorous selection process based on merit.

ARGUMENTS AGAINST PASSAGE

The ability of the public to elect justices and judges in Nevada is an important aspect of democracy. Providing that candidates for justice or judge must be nominated by the Commission on Judicial Selection and appointed by the Governor does not ensure judicial competence and integrity. Passage of this question would eliminate the right of voters to initially elect justices and judges.

Appointment removes an essential level of public scrutiny and is an undemocratic way to select justices and judges that ignores the will of the people. This question assumes an uninformed electorate and presumes that a select group of individuals are better qualified to choose those who will sit on the bench. It also promotes a system in which those in the legal profession can recommend colleagues to the highest positions of the judicial branch. Qualified candidates may be excluded from consideration by the Commission on Judicial Selection for arbitrary reasons. Similarly, justices and judges may be unfairly evaluated by the Commission on Judicial Performance.

This question will not eliminate the potential for judicial corruption and political influence. Several states have addressed this concern in other ways. For example, some states prohibit judicial candidates from accepting campaign contributions and others require recusal from cases in which a party or their attorneys have contributed to the justice’s or judge’s campaign. These alternatives would solve the problem of political campaigning and fundraising without eliminating the right of the people to elect their judiciary. Finally, Rule 4.2 of the Nevada Code of Judicial Conduct currently provides that justices and judges cannot raise campaign funds if they run for election unopposed.

FISCAL NOTE

Financial Impact – Cannot Be Determined

The provisions of this question would amend Article 6, Section 20 of the Nevada Constitution to increase the membership on the Commission on Judicial Selection from seven to nine members, and require that the Commission select three nominees for a vacancy occurring for any reason in the Supreme Court or the District Courts throughout the State. Based on information provided by the Administrative Office of the Courts, enactment of these provisions would increase the workload of the Commission, requiring additional meeting preparation, travel expenses, room rental, and staff costs for each meeting of the Commission necessary to create the list of candidates for a judicial vacancy, thereby resulting in a financial impact upon the State. However, the timing and frequency of future vacancies that would require meetings of the Commission is not known, and the number of meetings that would be necessary to fill any
vacancy on the Supreme Court or in a District Court cannot be determined. Thus, the actual financial effect upon the State cannot be determined with any reasonable degree of certainty.

The provisions of this question would also amend Article 6 of the *Nevada Constitution* by adding a new section, designated Section 22, which would create a Commission on Judicial Performance as a new entity responsible for evaluating any Supreme Court Justice or District Court judge who wishes to seek another term through a retention election. Based on information received by the Administrative Office of the Courts, enactment of these provisions would require the Commission on Judicial Performance to develop and implement specific evaluation criteria to be used by the Commission to perform its specified duties. However, the specific evaluation criteria that will be established for use by the Commission and the number of judges and justices who may wish to seek retention, if this question is approved, cannot be determined. Thus, the specific financial impact upon the State or local government or upon individual taxpayers cannot be determined at this time.

Under current law, justices of the Nevada Supreme Court and judges of the District Courts of the State are elected by popular vote at a general or special election. The provisions of the constitutional amendment would eliminate the election of Supreme Court justices and District Court judges when there is a vacancy and would require retention elections for any judge or justice who wishes to retain his or her seat for another term. Based on information received from the Office of the Secretary of State, these provisions would have no financial impact upon the State or local government.
QUESTION NO. 2

Amendment to the *Nevada Constitution*

Senate Joint Resolution No. 9 of the 74th Session

CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended to allow for the establishment of an intermediate appellate court, that would have jurisdiction over appeals of certain civil and criminal cases arising from the district courts?

<table>
<thead>
<tr>
<th>Yes</th>
<th>313,769 Votes (46.82%)</th>
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<tbody>
<tr>
<td>No</td>
<td>356,357 Votes (53.18%)</td>
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EXPLANATION

The proposed amendment to the *Nevada Constitution* would authorize the Legislature to establish an intermediate appellate court, known as the Nevada Court of Appeals, that would have jurisdiction to hear certain appeals arising from civil and criminal cases from the district courts. If the Legislature establishes the intermediate appellate court, the Nevada Supreme Court would be responsible for establishing the specific jurisdiction of the Court of Appeals and for providing review of its decisions.

Currently, language in Article 6 of the *Nevada Constitution* provides for the court system in Nevada, comprised of a Supreme Court, district courts, justices of the peace, and municipal courts. The Supreme Court is the only court in Nevada with jurisdiction to hear cases that are appealed from decisions rendered by the district courts. In addition, the Supreme Court has original jurisdiction over certain types of cases and administers the functions of the State Bar of Nevada and the judiciary.

The proposed amendment does not create the Court of Appeals, but rather authorizes the Legislature to establish the Court.

A “Yes” vote would authorize the Legislature to establish an intermediate appellate court.

A “No” vote would retain the existing court system.

ARGUMENTS FOR PASSAGE

Increasing population and caseloads throughout Nevada’s court system support the establishment of an intermediate Court of Appeals. For several decades, Nevada was the fastest growing state in the nation and the number of cases in the court system increased at a similar rate. Although the pace of Nevada’s population growth has slowed, the State is still growing and the workload
of its court system continues to grow. The number of judges in the district courts has increased in recent years in an effort to maintain the public’s timely access to justice.

Nevada’s Supreme Court is the highest court in the State. It is one of the busiest courts in the nation and has already implemented technological and procedural improvements to accommodate caseload growth. It hears all appeals of civil and criminal cases originating in the district courts. However, the American Bar Association recommends that when the volume of appeals becomes so great that the Supreme Court cannot decide these cases at a desirable pace, an intermediate appellate court should be created. Nevada has reached that point.

The new Court of Appeals will improve efficiency, minimize delay, maintain quality in the judicial process, ensure timeliness of decisions, provide the Supreme Court with the ability to focus on precedent-setting cases, and increase the number of written opinions that establish the State’s common law. Currently, Nevada is one of only 11 states and the District of Columbia that do not have an intermediate appellate court.

Completion of the Regional Justice Center in Las Vegas would allow the Court of Appeals to share facilities and other existing resources with the Supreme Court. Therefore, the costs associated with establishing the Court of Appeals may be reduced since no new facilities may be necessary.

ARGUMENTS AGAINST PASSAGE

Establishment of the new Nevada Court of Appeals would simply shift the increasing caseload from the Supreme Court to the Court of Appeals and would add another step to the process of litigation. Another level in the judicial system is not desirable, as it would potentially increase costs for litigants and add time to an already lengthy legal process.

Establishment of the intermediate appellate court would require the State to allocate funds and resources to the court system that might otherwise be used for more essential purposes.

FISCAL NOTE

Financial Impact – Cannot Be Determined

If this proposal to amend the Nevada Constitution is approved by voters, the Nevada Legislature would be authorized to establish an intermediate appellate court within this State. Approval of this proposal by the voters would have no direct or immediate financial impact upon the State and local governments or individual taxpayers, as the proposal authorizes, but does not require, the Legislature to establish an intermediate appellate court.

If this proposal is approved by the voters and the Legislature chooses to establish an intermediate appellate court, there would be a financial impact upon the State and local governments. The provisions of the constitutional amendment specify the minimum number of judges that must
make up the appellate court, but allows the Legislature to add additional appellate judges to the proposed court. The creation of an appellate court would require professional and administrative staff, in addition to other one-time and ongoing costs related to the operation of the appellate court. The Legislature would be responsible for setting the salaries of the judges and professional and administrative staff, as well as establishing the one-time and ongoing costs related to the operation of the court. Because it is not possible to determine the decisions the Legislature may make with respect to the establishment and operation of an intermediate appellate court, if the Legislature chooses to establish one, the specific financial impact upon the State and local government or individual taxpayers cannot be determined at this time.

If this question is approved by voters and the Legislature considers legislation that would establish an intermediate appellate court, a fiscal note would be prepared based on the proposed legislation and made available at that time for consideration by the Legislature.
QUESTION NO. 3
Amendment to the Sales and Use Tax Act of 1955
Assembly Bill 403 of the 75th Session

CONDENSATION (Ballot Question)

Shall the Sales and Use Tax Act of 1955 be amended to authorize the Legislature to amend or repeal any provision of this Act only if necessary to resolve a conflict with any federal law or interstate agreement for the administration, collection, or enforcement of sales and use taxes?

Yes [ ]
No [ ]

EXPLANATION

This proposed amendment to the Sales and Use Tax Act of 1955 would authorize the Nevada Legislature to enact legislation amending or repealing any provision of this Act without obtaining voter approval whenever such legislation is necessary to resolve a conflict with any federal law or interstate agreement for the administration, collection, or enforcement of sales and use taxes. The proposed amendment would not authorize the Legislature, without obtaining voter approval, to enact any legislation that increases the rate of any tax imposed pursuant to this Act, or to narrow the scope of any exemption under the Act.

Nevada has enacted laws providing for the administration of sales and use taxes in accordance with the interstate Streamlined Sales and Use Tax Agreement to which Nevada is a member. The purpose of this Agreement is to simplify and modernize sales and use tax administration in order to reduce the burden of tax compliance for all sellers and types of commerce within and across state lines. To avoid a conflict with the provisions of the Agreement, the Legislature may be required to enact legislation amending the Sales and Use Tax Act of 1955 in response to federal legislation approved by Congress affecting the Agreement or in response to interstate actions amending the Agreement. The Legislature has the authority to amend local sales taxes without voter approval, but the Sales and Use Tax Act, which was enacted by referendum, cannot be amended without voter approval. Passage of this question would grant limited authority to amend the Sales and Use Tax Act to resolve certain conflicts.

A “Yes” vote would authorize the Legislature to amend or repeal any provision of the Sales and Use Tax Act of 1955 without voter approval in order to resolve a conflict with federal law or interstate agreements for the administration, collection, or enforcement of the sales and use tax, except for legislation that would increase the rate of tax imposed pursuant to the Act or narrow the scope of any exemption under the Act.

A “No” vote would continue to require the Legislature to obtain voter approval before enacting any legislation amending or repealing any provision of the Sales and Use Tax Act of 1955.
ARGUMENTS FOR PASSAGE

To remain in compliance with the Streamlined Sales and Use Tax Agreement, Nevada must act in a timely manner regarding federal legislation or amendments to the Agreement that affect the Sales and Use Tax Act of 1955. Authorizing the Legislature to amend or repeal provisions of the Act without voter approval, under certain limited conditions, would allow the Legislature to respond flexibly and efficiently to such legislation and amendments. Because the Legislature only meets regularly in odd-numbered years and general elections only occur in even-numbered years, there is already a potential 2-year delay in maintaining compliance with the Agreement. The additional delay of requiring approval of a ballot question to make technical and administrative changes relating to sales and use taxes increases the risk of falling out of compliance with the Agreement, which would jeopardize Nevada’s membership status under the Agreement.

This amendment does not authorize the Legislature, without voter approval, to increase the State’s portion of the tax rate (2 percent) or to take away or narrow the scope of any tax exemption under the Act.

ARGUMENTS AGAINST PASSAGE

Amendments to the Sales and Use Tax Act of 1955 have required voter approval since 1956 when Nevada voters approved the Act through the constitutional referendum process. Since that time, the Department of Taxation has been able to administer sales and use taxes and the Nevada Legislature has been able to enact appropriate legislation to amend the State’s portion of the sales and use tax and obtain voter approval when required. With respect to federal law and the Streamlined Sales and Use Tax Agreement, the State was able to become a member to the Agreement and has been able to maintain compliance with the Agreement up to this point under the current process that requires voter approval. The citizens of Nevada should not give up the right to approve even minor legislation that changes the administration, collection, and enforcement of the State’s portion of the sales and use tax.
FISCAL NOTE

Financial Impact – Cannot Be Determined

If this proposal to amend the Sales and Use Tax Act of 1955 is approved by voters, the Nevada Legislature would be authorized to make changes to the Sales and Use Tax Act of 1955 without voter approval under certain conditions. It cannot be determined with any degree of certainty the number or types of legislative actions that would be required by the Legislature which would meet all of the conditions specified within the question. Thus, the financial impact on the sales and use taxes collected in the State or upon individual taxpayers cannot be determined with any reasonable degree of certainty.
QUESTION NO. 4

Amendment to the Nevada Constitution

Assembly Joint Resolution No. 3 of the 74th Session

CONDENSATION (Ballot Question)

Shall Article 1, Section 22 of the Nevada Constitution be repealed and shall Article 1, Section 8 of the Nevada Constitution be amended to revise provisions relating to eminent domain proceedings?

Yes † 214,086 Votes (32.72%)  No † 440,245 Votes (67.28%)

EXPLANATION

Approval of this question would repeal Article 1, Section 22 of the Nevada Constitution, known as the People’s Initiative to Stop the Taking of Our Land (PISTOL), and amend Article 1, Section 8 of the Nevada Constitution in order to: (1) provide that the transfer of private property from one private party to another is not considered a public use except under certain circumstances; (2) require an entity that takes private property to provide the property owner with all appraisals it has obtained; (3) grant a property owner the right to a separate determination of whether a taking constitutes a public use and place the burden of proof on the entity taking the property; (4) define “fair market value” and “just compensation”; (5) provide that neither party to an eminent domain action is liable for the other party’s attorney’s fees except under certain circumstances; and (6) make certain other changes related to eminent domain proceedings.

The proposed amendment provides five exceptions to the prohibition against exercising eminent domain in order to transfer property from one private party to another. Under the following conditions, such a transfer would be considered a “public use” if: (1) the private party obtaining the property uses the property primarily to benefit a public service such as a utility, railroad, public transportation project, pipeline, road, bridge, airport, or facility that is owned by a public entity; (2) the property is leased to a private party that takes up a portion of an airport or facility that is owned by a public entity so long as the public entity notifies the original owner of its intention and allows the owner the opportunity to bid or propose on such a lease; (3) the property taken has been abandoned by the owner, is a threat to public safety, or contains hazardous waste that must be remediated, and the original owner is granted first right of refusal to reacquire the property on the same terms and conditions as anyone else; (4) the entity that obtains the property exchanges it for other property in order to relocate public or private structures or avoid excessive compensation or damages; or (5) the person from whom the property is taken consents to the taking.

Additionally, the proposed amendment defines the terms “fair market value” and “just compensation” and provides for the manner of computing these amounts. It also stipulates that
neither party may be held liable for the other party’s attorney’s fees in eminent domain proceedings except in the circumstance of an inverse condemnation, wherein a property owner makes a request for attorney’s fees in a legal action. The proposed amendment revises from 5 years to 15 years the amount of time within which the entity that took the property must put it to use before the property must be offered to, and will revert to, the original owner upon payment of the original purchase price.

Finally, the repeal of Article 1, Section 22 of the Nevada Constitution would rescind a property owner’s right to disqualify one judge at the district court level and one judge at each appellate level in any eminent domain action.

A “Yes” vote would repeal Article 1, Section 22 of the Nevada Constitution and amend Article 1, Section 8 of the Nevada Constitution relating to eminent domain proceedings.

A “No” vote would retain Article 1, Section 22 of the Nevada Constitution and keep intact the current provisions of Article 1, Section 8 of the Nevada Constitution relating to eminent domain proceedings.

ARGUMENTS FOR PASSAGE

Although the People’s Initiative to Stop the Taking of Our Land (PISTOL) remains a well-intentioned, popular initiative that provided much needed protection for Nevada’s private property owners, it also contains several flaws that have the potential to cost taxpayers money and hamper efforts to maintain and upgrade infrastructure, including schools, roads, water supply and sewage systems, and public transportation.

Recognizing these problems, representatives of local governments, state agencies, private businesses, the public, and even the original sponsors of PISTOL worked together over the course of two legislative sessions to craft a workable constitutional amendment relating to eminent domain that allows Nevada to move forward with public projects while protecting private property rights, saving taxpayers money, and avoiding unnecessary lawsuits. The provisions of this question clearly define the limited instances in which private property can be transferred or leased to a private party through eminent domain, which do not include increasing tax revenue or generating profit for private businesses. This question builds on the successes of PISTOL while correcting its deficiencies.
ARGUMENTS AGAINST PASSAGE

The People’s Initiative to Stop the Taking of Our Land (PISTOL) was a response to eminent domain practices upheld by the United States Supreme Court in *Kelo v. the City of New London* and by the Nevada Supreme Court in *Pappas v. the City of Las Vegas*. In those cases, the courts expanded the definition of “public use” to allow local governments to increase their tax bases by turning over private property to private persons in order to support private business interests. This question seeks to weaken the protections contained in PISTOL by expanding the circumstances under which a government can use eminent domain to transfer property from one private party to another.

The PISTOL initiative sought, in clear and concise language, to put a stop to these transfers once and for all, and to give property owners legal tools to use in the event that their property was targeted for taking by the government. The initiative passed with over 60 percent of the vote in both 2006 and 2008. Voters understood the issues at hand and chose to pass the initiative in two successive elections. There is no reason to change the provisions of PISTOL.

FISCAL NOTE

Financial Impact – Cannot be Determined

This question would amend the *Nevada Constitution* to include new provisions relating to eminent domain proceedings within the State of Nevada, including:

- Allowing the direct or indirect transfer of any interest in private property to another private person or entity as a public use in certain circumstances, as specified in the proposed constitutional amendment;

- Removing the right for property owners to preempt one judge at the district court level and one judge at each appellate level in any eminent domain action; and

- Requiring that property taken by eminent domain must be offered to, and reverts to, the person from whom the property was taken, upon repayment of the purchase price, if the entity who took the property fails to use the property within 15 years after obtaining possession of the property.

These proposed changes relating to eminent domain proceedings may affect the number of eminent domain proceedings that are undertaken by the State and local governments. However, because the number of eminent domain actions that may be undertaken cannot be estimated, the financial effect upon the State and local governments cannot be determined with any reasonable degree of certainty.
Subsections 4 through 8, inclusive, and subsection 12 of Article 1, Section 22 of the *Nevada Constitution* contain various provisions relating to the rights of property owners in eminent domain proceedings, the calculation of fair market value for the property, and the determination of just compensation to the property owner. If this question is approved by the voters, these provisions of the *Nevada Constitution* would be repealed and replaced with similar language contained in this proposed constitutional amendment. These provisions of this question are not anticipated to have a financial effect upon the State or local governments, if approved by the voters.