

## QUESTION NO. 1

Amendment to the *Nevada Constitution*

Senate Joint Resolution No. 7 of the 81st Session

### CONDENSATION (Ballot Question)

Shall Article 11 of the *Nevada Constitution* be amended to remove certain provisions governing the Board of Regents of the Nevada System of Higher Education and provide greater accountability through regular independent audits of public institutions of higher education? The removal of these provisions of the *Nevada Constitution* would not change the current statutory election process of 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 the State's entire system of public higher education. 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 the Nevada System of Higher Education (NSHE). For example, since at least the 1970s, Board policies regarding student credit transfers have resulted in the loss of credits for some students when transferring between NSHE institutions, leading to unnecessary and costly barriers to the completion of degrees. If the Board's control and management of the State University were subject to the same level of legislative oversight typically applied to other government agencies, the Legislature would have the power to change any of the Board's policies and procedures that are unresponsive to the higher education needs of the State.

Additionally, 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 NSHE audit 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 that are not used for the same 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.

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 under the Morrill Land Grant Act of 1862 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.

Finally, Question 1 will clarify and modernize 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 without changing the purpose or use of those proceeds and without violating federal law.

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 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.

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 by two years. The Board must also explain and justify its financial management decisions to the Legislature in a manner similar to other Executive Branch agencies, and the Legislature retains the ultimate power of the purse to determine the amount of state funding for higher education.

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. The sole focus of the Board is on higher education policy, and it is best equipped to govern NSHE. 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, higher education 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.

Finally, the framers of the *Nevada Constitution* named the Board as the proper trustee to administer 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. By removing the Board as the constitutionally designated trustee, this ballot question would allow the Legislature to name any other Executive Branch agencies or officers as a statutory trustee, whether or not they have any experience, knowledge or understanding of the higher education system or its funding needs. Such a deviation from the intent of the framers could be a recipe for fiscal irresponsibility and mismanagement, which could potentially jeopardize the State’s compliance with the federal law.

Keep the *Nevada Constitution* the same and maintain the constitutional status of the Board of Regents. 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 or the auditing of public higher education institutions in Nevada cannot be predicted. Thus, the resulting financial impact upon State government, if any, 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.