

## QUESTION NO. 2

Amendment to the *Nevada Constitution*

Assembly Joint Resolution No. 2 of the 79th Session

### CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended to: (1) remove an existing provision recognizing marriage as only between a male person and a female person and require the State of Nevada and its political subdivisions to recognize marriages of and issue marriage licenses to couples, regardless of gender; (2) require all legally valid marriages to be treated equally under the law; and (3) establish a right for religious organizations and clergy members to refuse to perform a marriage and provide that no person is entitled to make any claim against them for exercising that right?

Yes       No

### EXPLANATION & DIGEST

**EXPLANATION**—This ballot measure would remove an existing provision in the *Nevada Constitution* which provides that only a marriage between a male person and a female person may be recognized and given effect in Nevada. Based on a 2015 United States Supreme Court decision, this state constitutional provision is currently preempted by federal constitutional law and is therefore unenforceable.

In addition, based on the 2015 U.S. Supreme Court decision, each State must: (1) issue marriage licenses to same-sex couples on the same terms and conditions as opposite-sex couples; and (2) recognize same-sex marriages validly performed in another state. This ballot measure would amend the *Nevada Constitution* to require that the State of Nevada and its political subdivisions must recognize marriages of and issue marriage licenses to couples regardless of gender, and that all legally valid marriages must be treated equally under the law.

Finally, based on a 2018 U.S. Supreme Court decision, a member of the clergy who objects to same-sex marriages on moral and religious grounds cannot be compelled to perform same-sex marriages. This ballot measure would amend the *Nevada Constitution* to provide that religious organizations and members of the clergy have the right to refuse to perform a marriage, and that no person has the right to make any claim against a religious organization or member of the clergy for refusing to perform a marriage.

**A “Yes” vote would amend the *Nevada Constitution* to: (1) remove the currently preempted and therefore unenforceable provision stating that only a marriage between a male person and a female person may be recognized and given effect in Nevada; (2) require that the State of Nevada and its political subdivisions must recognize marriages of and issue marriage**

**licenses to couples regardless of gender, and that all legally valid marriages must be treated equally under the law; and (3) provide that religious organizations and members of the clergy have the right to refuse to perform a marriage, and that no person has the right to make a claim against a religious organization or member of the clergy for refusing to perform a marriage.**

**A “No” vote would keep the currently preempted and therefore unenforceable provision in the *Nevada Constitution* stating that only a marriage between a male person and a female person may be recognized and given effect in this State and would not add a provision in the *Nevada Constitution* providing that religious organizations and members of the clergy have the right to refuse to perform a marriage, and that no person has the right to make a claim against a religious organization or member of the clergy for refusing to perform a marriage.**

**DIGEST**—An existing provision in the *Nevada Constitution* provides that only a marriage between a male person and a female person may be recognized and given effect in this State. (Nev. Const. Art. 1, § 21) However, in a 2015 decision, the U.S. Supreme Court held that the right to marry is guaranteed by the Fourteenth Amendment to the *United States Constitution* and that same-sex couples may not be deprived of that right. (*Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)) Under the Supremacy Clause of the *United States Constitution*, federal constitutional law supersedes and preempts conflicting state constitutional law. (U.S. Const. Art. VI, cl. 2) As a result, because the existing provision in the *Nevada Constitution* conflicts with federal constitutional law, it is currently preempted by federal constitutional law and is therefore unenforceable. This ballot measure would remove that unenforceable provision from the *Nevada Constitution*.

In the 2015 decision, the U.S. Supreme Court determined that each State must: (1) issue marriage licenses to same-sex couples on the same terms and conditions as opposite-sex couples; and (2) recognize same-sex marriages validly performed in another state. (*Obergefell v. Hodges*, 135 S. Ct. 2584 (2015)) This ballot measure would amend the *Nevada Constitution* to require that the State of Nevada and its political subdivisions must recognize marriages of and issue marriage licenses to couples regardless of gender, and that all legally valid marriages must be treated equally under the law.

Existing law authorizes licensed, ordained, or appointed ministers and certain other church or religious officials to obtain and renew a certificate of permission to perform marriages. (NRS 122.062 through 122.073) In a 2018 decision, the U.S. Supreme Court stated that it can be assumed that a member of the clergy who objects to same-sex marriages on moral and religious grounds could not be compelled to perform same-sex marriages without denial of the clergy member’s right to the free exercise of religion guaranteed by the First Amendment to the *United States Constitution*. (*Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719 (2018)) This ballot measure would provide that religious organizations and members of the clergy have the right to refuse to perform marriages, and that no person has the right to make a claim against a religious organization or member of the clergy for refusing to perform a marriage.

## ARGUMENTS FOR PASSAGE

With the U.S. Supreme Court's decision in *Obergefell v. Hodges*, same-sex marriage has been legal across the country since 2015. Accordingly, the unenforceable provision in the *Nevada Constitution* that recognizes only a marriage between a man and a woman should be removed. Eliminating this discriminatory language and requiring the State of Nevada and its political subdivisions to recognize all legal marriages regardless of gender will ensure marriage equality for all Nevadans.

Question 2 also preserves the constitutional right to religious freedom. Recognizing a same-sex couple's right to marry in the *Nevada Constitution* would ensure every couple the freedom to marry. At the same time, Question 2 also allows religious organizations and clergy members the freedom to choose whether or not to perform a marriage.

Although same-sex couples may enter into domestic partnerships in Nevada, a domestic partnership is not equal to a marriage. Unlike a marriage, a Nevada domestic partnership may or may not be recognized by other states. Moreover, the federal government does not grant domestic partnerships the same rights and benefits as marriage, including family-related Social Security benefits and joint filing of federal income tax returns.

Remove discriminatory and unenforceable language from the *Nevada Constitution* and replace it with provisions guaranteeing equal marriage rights for all Nevadans. Vote "yes" on Question 2.

## ARGUMENTS AGAINST PASSAGE

At the general elections in both 2000 and 2002, Nevada voters ratified an amendment to the *Nevada Constitution* by approving an initiative petition—proposed by the people of Nevada—that defines marriage as being only between a man and a woman. This ballot question—proposed by the Legislature—asks voters to change the *Nevada Constitution* based on a 5-4 decision of the U.S. Supreme Court. If the U.S. Supreme Court were to overturn this decision, the definition of marriage currently in the *Nevada Constitution* would again be the controlling law of Nevada. The *Nevada Constitution* should reflect the will of the people of Nevada and not be changed in reaction to a court decision that can be overturned.

Recognizing same-sex marriage in the *Nevada Constitution* raises serious questions about the right to religious freedom guaranteed to every Nevadan. Traditionally, for some religions, marriage has been viewed as an institution typically recognizing only the union between one man and one woman. For some people, this traditional definition of marriage remains a core part of their religious beliefs, and they hold genuine and sincere religious convictions that same-sex marriage is incompatible with and undermines the sanctity of traditional marriage.

There is no need to change the traditional definition of marriage to include same-sex couples. Domestic partnerships are a viable option for same-sex couples in Nevada. These partnerships were enacted under the current constitutional provisions and already afford many of the rights of marriage, including community property, inheritance without a will, and hospital visitation. The State has the ability to expand these rights, and therefore, approval of Question 2 is not necessary.

Uphold the traditional definition of marriage as a union between one man and one woman that currently exists in the *Nevada Constitution*. Vote “no” on Question 2.

## FISCAL NOTE

### **Financial Impact—No**

The *Nevada Constitution* provides that only a marriage between a male person and a female person may be recognized and given effect in Nevada. However, based on the United States Supreme Court’s ruling in *Obergefell v. Hodges*, marriages are currently recognized by the State and local governments in Nevada regardless of gender, irrespective of the language in the *Nevada Constitution*. Thus, there is no anticipated financial impact upon the State or local governments if Question 2 is approved by the voters.