

### QUESTION NO. 3

Amendment to the *Nevada Constitution*

Senate Joint Resolution No. 1 of the 79th Session

#### CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended to: (1) require the State Board of Pardons Commissioners—whose members are the Governor, the justices of the Nevada Supreme Court, and the Nevada Attorney General—to meet at least quarterly; (2) authorize each member of the Board to submit matters for consideration by the Board; and (3) authorize the Board to grant pardons and make other clemency decisions by a majority vote of its members without requiring the Governor to be part of the majority of the Board that votes in favor of such decisions?

Yes       No

#### EXPLANATION & DIGEST

**EXPLANATION**—This ballot measure would amend existing provisions of the *Nevada Constitution* that govern the powers and functions of the State Board of Pardons Commissioners whose members are the Governor, the justices of the Nevada Supreme Court, and the Nevada Attorney General. This ballot measure would require the Board to meet at least once each calendar quarter and would allow for each member of the Board to submit matters for the Board’s consideration. This ballot measure would also authorize the Board to grant pardons and make other clemency decisions by a majority vote of its members without requiring the Governor to be part of the majority of the Board that votes in favor of such decisions.

**A “Yes” vote would require the State Board of Pardons Commissioners to meet at least quarterly, allow any member to submit a matter for the Board’s consideration, and authorize the Board to grant pardons and make other clemency decisions by a majority vote of its members without requiring the Governor to be part of the majority of the Board that votes in favor of such decisions.**

**A “No” vote would keep existing provisions of the *Nevada Constitution*, which do not specify the frequency of meetings of the State Board of Pardons Commissioners and which provide that the Board may grant pardons and make other clemency decisions by a majority vote of its members only if the Governor is part of the majority of the Board that votes in favor of such decisions.**

**DIGEST**—The *United States Constitution* authorizes the President of the United States to grant pardons and reprieves for federal offenses, except in cases of impeachment. (U.S. Const. Art. II, § 2) By contrast, the *Nevada Constitution* authorizes the Governor, the justices of the Nevada Supreme Court, and the Nevada Attorney General, as a body, to remit fines and forfeitures,

commute certain punishments, and grant pardons for state offenses, except treason and impeachments, subject to certain procedural regulations provided by law. (Nev. Const. Art. 5, § 14) Existing law immediately restores certain civil rights, such as the right to vote and the right to serve as a juror in a civil action, to a person who has been convicted of certain offenses and who has been discharged from probation or parole or released from prison upon the expiration of his or her sentence. A pardon can immediately restore other civil rights, including the person's right to hold office and the right to serve on a jury in a criminal case. (NRS 176A.850, 213.155, 213.157) Only a full, unconditional pardon can restore the right to bear arms to a person convicted of certain offenses. (NRS 213.090)

The *Nevada Constitution* does not expressly name the State Board of Pardons Commissioners or the frequency with which the Board must meet. Instead, the name of the Board and the requirement to meet at least twice a year are designated by state law. (NRS 213.010) For the Board to grant pardons and make other clemency decisions, the *Nevada Constitution* requires that at least a majority of the Board votes in favor of such decisions and that the Governor be part of that majority. (Nev. Const. Art. 5, § 14) Thus, the Governor can block the granting of a pardon, commuting of a sentence, remitting of a fine or forfeiture, or restoring of a civil right by voting against the action.

This ballot measure would amend the *Nevada Constitution* to: (1) require the State Board of Pardons Commissioners to meet at least once each calendar quarter; (2) authorize each member of the Board to submit matters for consideration by the Board; and (3) authorize the Board to grant pardons and make other clemency decisions by a majority vote of its members without requiring the Governor to be part of the majority of the Board that votes in favor of such decisions.

### **ARGUMENTS FOR PASSAGE**

Requiring the State Board of Pardons Commissioners to meet at least quarterly will allow it to process its workload in a more timely and efficient manner. Currently, the Board is supposed to hold at least two meetings per year to review applications submitted by people petitioning to have a pardon granted, a sentence commuted, a fine or forfeiture remitted, or a civil right restored. However, in six out of the last ten years, the Board has only met once per year, creating a backlog of applications. An applicant who meets the qualifications should be given a chance to have his or her application reviewed by the Board in a timely manner.

Existing law allows the Governor to block the approval of an application by a majority of the Board, even if every other Board member supports its approval. There is no justification for this. The point of vesting clemency power in the Board, as opposed to solely with the Governor as some other states do, is to take advantage of the collective wisdom of the Board. Of the 21 states where this power rests with an executive or administrative board, Nevada is the only state where the Governor has the power to block approval by a majority of the Board.

Finally, the Board is comprised of nine elected officials who are well-qualified to make decisions regarding clemency: the seven justices of the Nevada Supreme Court, the Nevada Attorney General, and the Governor. Allowing each of these members to propose matters for the Board's consideration makes the process more fair and just.

Make the operation of the Board more timely, efficient, and fair. Vote "yes" on Question 3.

### **ARGUMENTS AGAINST PASSAGE**

A person who was convicted of a crime and sentenced under Nevada state law may petition the State Board of Pardons Commissioners to have a pardon granted, a sentence commuted, a fine or forfeiture remitted, or a civil right restored. The Board generally holds hearings twice a year to review these applications. However, a convicted person does not have a right to the review of his or her application. Clemency is a privilege and an honor reserved for those who have demonstrated good behavior following a criminal conviction. In addition, requiring the Board to meet quarterly is inefficient because the Board may have to meet even if there is a lack of qualified applicants.

The *Nevada Constitution* requires that the Governor must be in favor of the clemency decisions made by a majority of the Board. As the Chief Executive and the leader of our State, the Governor rightly has the power to block the Board's decisions to grant clemency. Granting the Governor final authority over clemency decisions is not uncommon. In fact, there are 29 states without similar pardons boards, and the governors in those states have the sole power to grant clemency.

Lastly, changing the *Nevada Constitution* to allow each Board member to propose matters for the Board's consideration diminishes the Governor's constitutional power and ability to act in the best interest of justice and fairness.

Nevada voters should keep the current operations of the Board. Vote "no" on Question 3.

### **FISCAL NOTE**

#### **Financial Impact—Yes**

Under current law, the State Board of Pardons Commissioners, consisting of the Governor, the justices of the Nevada Supreme Court, and the Nevada Attorney General, is required to meet at least semiannually to consider requests to have a fine or forfeiture remitted, a punishment commuted, a pardon granted, or a civil right restored. Since 2001, the Board has met at least once per calendar year, with two meetings held per year in calendar years 2002, 2005, 2006, 2011, 2017, 2018, and 2019, and three meetings held per year in calendar years 2001, 2004, and 2007. The Board is scheduled to hold three meetings during calendar year 2020.

The provisions of Question 3 require the Board to meet at least quarterly, which would increase the number of meetings that are held in any given calendar year from the historical pattern. The Board has indicated that, based on historical expenses, its average meeting costs the State

approximately \$4,250. Thus, to the extent that the Board would be required to meet more frequently if Question 3 is approved, the Board would incur additional expenses of approximately \$4,250 for each additional meeting held. However, since it cannot be predicted how many additional meetings the Board may hold if Question 3 were to be approved, the resulting financial impact upon State government from those additional meetings cannot be determined with any reasonable degree of certainty.

The provisions of Question 3 also allow any member of the Board, rather than just the Governor, to submit matters for consideration by the Board. The Division of Parole and Probation of the Department of Public Safety, which provides staff support to the Board, has indicated that allowing any member of the Board to submit matters for consideration, in conjunction with the increase in the number of meetings that must be held each year, will increase the workload of the Division. The Division estimates that it will require two additional staff members to provide support to the Board with managing its caseload, resulting in an approximate increase in expenditures by the State of \$175,000 per fiscal year.

The Department has also indicated that, based on the anticipated increase in workload resulting from the provisions of Question 3, the State Board of Parole Commissioners will require one additional administrative position, which would result in an increase of expenditures by the State of approximately \$65,000 per fiscal year.