

Ballot Question No. 1

*Senate Joint Resolution No. 7 of the 81st Session
(File No. 26, Statutes of Nevada 2021)*

Proposing to Amend the Nevada Constitution
Relating to the Board of Regents of the State University

Senate Joint Resolution No. 7—Senator Dondero Loop

Joint Sponsor: Assemblyman Roberts

FILE NUMBER.....

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to remove the constitutional provisions governing the election and duties of the Board of Regents of the State University and to authorize the Legislature to provide by statute for the governance of the State University and for the auditing of public institutions of higher education in this State.

Legislative Counsel’s Digest:

Article 11 of the Nevada Constitution, commonly known as the Education Article, requires the Nevada Legislature to provide for the establishment of a State University that is controlled by a Board of Regents whose duties are prescribed by law. (Nev. Const. Art. 11, § 4) The Education Article also: (1) requires the Legislature to provide for the election of the members of the Board of Regents of the State University and to define their duties by law; and (2) authorizes the Board of Regents to control and manage the affairs of the State University and its funds under such regulations as may be provided by law. (Nev. Const. Art. 11, §§ 7, 8)

As required by the Education Article, the Legislature has provided by law for: (1) the establishment of the State University, which is known as the University of Nevada; and (2) the election of the members of the Board of Regents. (NRS 396.020, 396.040) Additionally, the Legislature has: (1) provided by law for the establishment of the Nevada System of Higher Education, which consists of the State University and other educational institutions, programs and operations; and (2) authorized the Board of Regents to administer the System 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 resolution proposes to amend the Nevada Constitution to remove the constitutional provisions governing the Board of Regents and to authorize the Legislature to provide by statute for the governance of the State University and for the auditing of public institutions of higher education in this State. However, although this resolution removes the status of the Board of Regents as a constitutional body under the Nevada Constitution, this resolution does not change the status of the Board of Regents as a statutory body under existing statutory provisions, which authorize the Board of Regents to administer the Nevada System of Higher Education and prescribe rules for its governance and management. In addition, this resolution does not repeal, either expressly or by implication, any of those existing statutory provisions relating to the Board of Regents, including the existing statutory provisions that provide for the election of the members of the Board of Regents.

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 Framers of the Nevada Constitution approved Section 8 of the Education Article to provide for the preservation and use of the proceeds derived from the sale of the federal land grants. (Nev. Const. Art. 11, § 8; *Debates & Proceedings of the Nevada State Constitutional Convention of 1864*, at 586 and 589-91 (Andrew J. Marsh off. rep. 1866)) This resolution proposes to amend Section 8 of the Education Article to: (1) remove references to the Board of Regents; (2) delete obsolete provisions; (3) clarify citations to the pertinent federal law, including all amendments thereto; and (4) specify that the proceeds derived under the federal law must be invested by the State of Nevada in the manner required by law.

If this resolution is passed by the 2021 Legislature, it must also be passed by the next Legislature and then approved and ratified by the voters in an election before the proposed amendments to the Nevada Constitution become effective.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

WHEREAS, Article 11 of the Nevada Constitution, commonly known as the Education Article, 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 law (Nev. Const. Art. 11, § 4); and

WHEREAS, The Education Article also requires the Legislature to provide for the election of the members of the Board of Regents and to define their duties by law (Nev. Const. Art. 11, § 7); and

WHEREAS, The Education Article authorizes the Board of Regents to control and manage the affairs of the State University and its funds under such regulations as may be provided by law (Nev. Const. Art. 11, §§ 7, 8); and

WHEREAS, When drafting the Education Article, the Framers of the Nevada Constitution purposefully added constitutional language to ensure that the powers and duties of the Board of Regents and its members “shall be prescribed by the Legislature,” in order to “not leave it to be inferred, perhaps, that they have absolute control” over the State University (*Debates & Proceedings of the Nevada State Constitutional Convention of 1864*, at 586 (Andrew J. Marsh off. rep. 1866) (statement of Delegate George A. Nourse)); and

WHEREAS, The Framers believed that the Board of Regents’ control and management of the affairs of the State University should be governed by laws enacted by the Legislature (*Debates & Proceedings of the Nevada State Constitutional Convention of 1864*, at 585-87 (Andrew J. Marsh off. rep. 1866)); and

WHEREAS, The Framers did not create the Board of Regents as a constitutional body in the Education Article to give the Board of Regents unchecked autonomy from legislative oversight (*Debates & Proceedings of the Nevada State Constitutional Convention of 1864*, at 585-91 (Andrew J. Marsh off. rep. 1866)); and



WHEREAS, As required by the Education Article, the Legislature has provided by law for the establishment of the State University, known as the University of Nevada, and has provided by law for the election of the members of the Board of Regents (NRS 396.020, 396.040); and

WHEREAS, The Legislature has provided by law for the establishment of the Nevada System of Higher Education, which consists of the State University and other educational institutions, programs and operations, and for the Board of Regents to administer the System 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); and

WHEREAS, In cases before the Nevada Supreme Court, the Board of Regents has asserted that its “unique constitutional status” gives it “virtual autonomy and thus immunity” from particular laws and policies enacted by the Legislature (*Board of Regents v. Oakley*, 97 Nev. 605, 607 (1981)); and

WHEREAS, Although the Nevada Supreme Court has rejected the Board of Regents’ broad assertion of autonomy and immunity from laws and policies enacted by the Legislature, the Nevada Supreme Court has recognized that the Board of Regents’ constitutional status prevents the Legislature from enacting certain legislation that directly “interferes with the Board’s essential management and control of the University” (*Board of Regents v. Oakley*, 97 Nev. 605, 608 (1981); *King v. Board of Regents*, 65 Nev. 533, 564-69 (1948)); and

WHEREAS, Under our Nation’s fundamental, well-established and long-standing principles of representative government, the traditional role of the people’s elected representatives in the Legislature is to serve as the people’s legislative check of accountability to ensure that public bodies, agencies and officers in the other branches of government are carrying out their governmental functions for the benefit of the people and in a manner consistent with the laws and policies enacted by the Legislature; and

WHEREAS, The Board of Regents has, at various times, relied on its constitutional status and its authority to control and manage the affairs of the State University as a defensive shield and cloak against the people’s legislative check of accountability, and the Board of Regents has, at various times, taken actions that have hindered, thwarted or undermined the Legislature’s investigation, review and scrutiny of the institutions, programs and operations of the Nevada System of Higher Education; and



WHEREAS, Like other public bodies, agencies and officers of the State Government, the Board of Regents should be subject to the people's legislative check of accountability through legislative oversight, and the Board of Regents' control and management of the affairs of the State University should be governed by all laws enacted by the Legislature; and

WHEREAS, To secure accountability to the people's elected representatives in the Legislature, the Nevada Constitution should be amended to remove the Board of Regents' constitutional status so that the Board of Regents operates only as a statutory public body to ensure that it is subject to the people's legislative check of accountability through legislative oversight and to ensure that the Board of Regents' control and management of the affairs of the State University are governed by all laws enacted by the Legislature; and

WHEREAS, Amending the Nevada Constitution to remove the Board of Regents' constitutional status will allow the Legislature to exercise the full extent of its legislative power to review, reform and improve the programs and operations of the State University and, in doing so, the Legislature will also have more options and greater flexibility to review, reform and improve all other institutions, programs and operations of the Nevada System of Higher Education; and

WHEREAS, Amending the Nevada Constitution to remove the Board of Regents' constitutional status will not repeal, either expressly or by implication, the existing statutory provisions which apply to the Board of Regents, the State University and all other institutions, programs and operations of the Nevada System of Higher Education, including, without limitation, the existing statutory provisions that provide for the voters to elect the members of the Board of Regents; now, therefore, be it

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That this resolution may be cited as the Nevada Higher Education Reform, Accountability and Oversight Amendment; and be it further

RESOLVED, That Section 4 of Article 11 of the Nevada Constitution be amended to read as follows:

~~[Sec:]~~ *Sec. 4. 1. The Legislature shall provide **by law** for the establishment **and governance** of a State University which shall embrace departments for Agriculture, Mechanic Arts, and Mining ~~[to be controlled by a Board of Regents whose duties shall be prescribed by Law.] and other departments deemed appropriate for the State University.~~*



2. The Legislature shall provide by law for biennial auditing of the State University and any other public institutions of higher education established by the Legislature in this State.

And be it further,

RESOLVED, That Section 8 of Article 11 of the Nevada Constitution be amended to read as follows:

~~[Sec:]~~ *Sec. 8.* The ~~[Board of Regents shall, from the interest accruing from the first funds which come under their control, immediately organize and maintain the said Mining department in such manner as to make it most effective and useful, Provided, that all the]~~ proceeds of the public lands donated by Act of Congress approved July ~~[second AD- Eighteen hundred and sixty Two,]~~ *2, 1862, ch. 130, 12 Stat. 503, and thereafter amended by Act of Congress,* for a college for the benefit of Agriculture ~~[, the Mechanics]~~ *and Mechanic* Arts, ~~[and]~~ including Military tactics, shall be invested by the ~~[said Board of Regents]~~ *State of Nevada in the manner required by law* in a separate fund to be appropriated exclusively for the benefit of the first named departments to the *State* University as set forth in Section ~~[Four above:]~~ *4 of this Article.* And the Legislature shall provide that if through neglect or any other contingency, any portion of the fund so set apart ~~[, shall be]~~ *is* lost or misappropriated, the State of Nevada shall replace said amount so lost or misappropriated in said fund so that the principal of said fund shall remain forever undiminished.

And be it further,

RESOLVED, That Section 7 of Article 11 of the Nevada Constitution be repealed.

And be it further,

RESOLVED, That this resolution becomes effective upon passage.



Ballot Question No. 1

Legislative Counsel Bureau's **Initial Draft** of Ballot Materials
for *Senate Joint Resolution No. 7 of the 81st Session*
Submitted to the Public for Comment
During the Period of May 21 to June 4, 2024

Ballot Question 1
Initial Draft

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.

Ballot Question No. 1

Public Comments Received by the LCB
During the Period of May 21 to June 4, 2024,
Regarding the LCB's **Initial Draft** of Ballot Materials for
Senate Joint Resolution No. 7 of the 81st Session



NEVADA FACULTY ALLIANCE
840 S. Rancho Dr., Suite 4-571
Las Vegas, Nevada 89106

Date: June 4, 2023

To: Legislative Counsel Bureau, Research Division

From: Kent Ervin, Director of Government Relations, Nevada Faculty Alliance

Subject: **Comment on Draft Ballot Language for Question 1**

The Nevada Faculty Alliance (NFA) is the independent statewide association of professional employees of the colleges and universities of the Nevada System of Higher Education. After students, we are the constituent group most affected by Nevada's higher education policies. We appreciate the opportunity to provide constructive comments on the draft ballot language for Question 1.

At this time, the NFA State Board has not taken a position and we are neutral on Question 1. This past spring, our faculty forums included three legislators for Question 1 and two regents against. We plan further educational programs as the General Election approaches.

Our interest in the ballot language is that the information provided to voters be accurate and unbiased. The Arguments For Passage and Arguments Against Passage should provide the best available arguments based on factual public information.

The following pages provide detailed comments and suggested edits. Thank you for your consideration.

Contact: kent.ervin@nevadafacultyalliance.org, 775-453-6837

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The Nevada Faculty Alliance is affiliated with the [American Association of University Professors](#), which advocates for academic freedom, shared governance, and faculty rights, and the [American Federation of Teachers/AFL-CIO](#), representing over 300,000 higher education professionals nationwide. The NFA works to empower our members to be wholly engaged in our mission to help students succeed.

CONDENSATION (issues highlighted):

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.

- 1) The “Nevada System of Higher Education” is not referenced in the Constitution, only a “State University.” The expansion of the governance by the Board of Regents over a system of two universities, a research institute, a state college, and four community colleges was accomplished by statute and is not addressed by Question 1.
- 2) The phrase “greater accountability through” is a value judgment that is not contained in the proposed amendment. Whether there is greater accountability with constitutionally mandated audits versus legislatively mandated audits is arguable. Accountability considerations belong in the Arguments, not in the Condensation.
- 3) The amendment does not require “independent” audits. The type of audits is left up to the Legislature.
- 4) Because the first sentence mentions two different provisions (those governing the Board of Regents and providing for audits), the antecedent of “these provisions” is ambiguous.
- 5) Stating that Question 1 would not change the statutory election process of the Board of Regents is technically true, but Question 1 would also not change any other current statutes. Implying in the Condensation that Question 1 will not change the elections of Regents when that is indeed a very possible future outcome is misleading to voters and appears to be an argument for passage. Instead of a negative statement of a single thing that would *not* immediately change, the Condensation could have a positive statement of how it would allow changes.

In keeping the draft structure of the proposed Condensation we recommend:

Shall Article 11 of the Nevada Constitution be amended to remove certain provisions governing the Board of Regents of the State University and to require regular audits of public institutions of higher education? The removal of the provisions governing the election and duties of the Board of Regents from the Nevada Constitution would allow the governance of the state institutions of higher education to be changed through the legislative process.

Alternatively, it might be better to follow the example of the Condensation language for Question 1 in 2020, stating only what the amendment does with no speculation about possible future implications:

Shall Article 11 of the *Nevada Constitution* be amended to: (1) remove provisions governing the election and duties of the Board of Regents and its control and management of the State University and instead to require the Legislature to provide by law for the governance of the

State University; (2) to require biennial audits of the public institutions of higher education in the State; and (3) to revise the administration of certain federal land grant proceeds dedicated for the benefit of certain departments of the State University?

Either of these versions would make the Condensation more accurate and unbiased.

ARGUMENTS FOR PASSAGE (issues highlighted):

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.

1) The amendment does not refer to the “entire system of public higher education” and NSHE has not yet been defined in this section.

2) The citation of transfer issues dating back to the 1970s is dated and ignores policies including common- course numbering and inter-institutional transfer agreements that have long since been successfully implemented to greatly improve students’ transfer experience. Recent internal audits show very high course-transfer rates, a success of the system as it exists. Better, more recent, examples could demonstrate the dysfunctionality and ineffectiveness of the Board of Regents, including: (1) the Board not holding the institutions accountable (legislative testimony by Huber and Nolan at the 3/21/2023 hearing on SJR7*), (2) failed [leadership searches](#), and (3) [offensive public statements](#) by a Regent.

3) The amendment to Section 8 of Article 11 neither “clarifies” nor significantly “modernizes” it. It still refers to the same 1862 federal law, now indicated as “July 2, 1862” rather than “July second A.D. Eighteen Hundred and sixty Two” and gives the federal statute number, which will be meaningless to most voters. What the amendment does substantively is remove the responsibility of the Board of Regents over the administration of Land Grant funds.

4) In addition, the first three paragraphs criticize the Board of Regents but lack summation sentences that say how the amendment will fix the stated problems.

We propose the following edits ([insertions](#) and [deletions](#)):

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~~ **public higher education in Nevada. Question 1 would mandate that the Legislature provide for the governance of the State University, giving the Legislature the ability to change the policies and procedures of the Nevada System of Higher Education (NSHE) to be more responsive to the higher education needs of the State.**

For years, the Legislature has received complaints about the Board’s policies and practices. ~~and the~~ **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. failed to hold NSHE and its colleges and universities to high standards of transparency and accountability; has had failed leadership searches; and shown ineffectiveness in overseeing its elected members to behave publicly in alignment with the Board’s nondiscrimination policies. However, the current constitutional language gives the Board of Regents full control over the management of the State University. Passage of Question 1 will give the Legislature.** ~~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~~ *In addition*, 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~~ *designated for different* 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~~ *students' education. Question 1 will require an audit every two years, ensuring accountability and transparency in the fiscal management of NSHE.*

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. *Passage of Question 1 will prevent the Board from improperly using its constitutional status to protect NSHE from public and legislative scrutiny.*

Finally, Question 1 will ~~clarify and modernize~~ *modify* 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 *by removing the constitutional responsibilities of the Board of Regents but ensuring those funds are used in accordance with federal law.* ~~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 (issues highlighted)

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.

- 1) The lead sentence is confusing because it starts the argument against passage with the proponents' arguments in favor.
- 2) The Constitution does not refer to a "system," and NSHE has not yet been defined in this section.
- 3) The full paragraph on the Land Grant provisions is excessive. The technical modifications are not controversial nor is it reasonable to believe that federal law would not be followed in the future. Condensing gives room for additional arguments.
- 4) The greater potential for political and partisan infringement on academic freedom with the passage of Question 1 (see testimony by Ervin at the SJR7 hearing on 3/5/2023) is an important issue that should be included.

5) The argument states that the Board of Regents is better equipped to manage NSHE but doesn't give the complementary argument that the biennial Legislature would likely have difficulty managing NSHE.

6) To bring the argument back to the amendment, the paragraph about existing legislative accountability and oversight should include a reference as to why the constitutional audit provision in Question 1 is unnecessary.

7) The proponents of Question 1 have emphasized that there will be no immediate changes after the passage of Question 1 because the duties of the Board of Regents are also specified in statute (Senator Dondero Loop at the SJR7 hearings in March 2023). The paragraph on the potential for future changes by the Legislature can be strengthened with that and with examples of recent bills intended to change the NSHE structure and election of Regents.

8) The arguments can be improved by reorganization and rewording.

We propose the following edits (*insertions*, ~~deletions~~, and moves):

~~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.~~ *The removal of the elections and duties of the Board of Regents from the Nevada Constitution will not make Nevada's higher education system more effective or efficient. Instead, the Legislature is attempting to gain more power and control over the operation of our public colleges and universities. That would only add partisan pressures to a governance system serving this state well.* Previous attempts to change higher education governance, including a *similar* 2020 ballot question to remove the constitutional status of the Board of Regents, have failed because Nevadans recognize the importance of keeping the *separate governance of higher education by elected Regents system* in the Nevada Constitution as originally drafted.

Academic freedom is under unprecedented attack by state legislatures and governors around the country. By removing the constitutional separation of governance for Nevada's colleges and universities from direct control by the Legislature and Governor, Question 1 increases the potential for political and partisan interference, including over curriculum and academic standards.

~~The sole focus of the Board is on higher education policy, and it is best equipped to govern NSHE. The Board of Regents is best equipped to govern the Nevada System of Higher Education (NSHE) because its sole focus is on higher education policy.~~ 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. The loss of the Board's independence, institutional knowledge, and expertise offers no guarantee of what the Legislature might implement in its place. *Furthermore, there is no evidence that the 63 elected citizen-legislators who have many complex matters to consider and only meet once every other*

year would be more effective at providing for the governance of NSHE than elected Regents, whose sole task is to oversee our colleges and universities on behalf of students.

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 *to* reduce member terms ~~by two~~ *from six to four* years. The Board must also explain and justify its financial management decisions to the Legislature ~~in a manner similar to~~ *as do* other Executive Branch agencies, and the Legislature ~~retains the ultimate power of the purse to determine~~ *determines* the amount of state funding for higher education. *The Legislature recently conducted an audit of NSHE. The special constitutional authority for an audit in Question 1 is not necessary, and no other state agency has an audit requirement in the Nevada Constitution.*

~~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.~~ *Proponents of Question 1 emphasize that no immediate changes would occur because the constitutional duties of the Board of Regents are also specified in statutes, begging the question of which changes would be enacted in the future. The passage of Question 1 would allow future legislatures to directly interfere in the governance of public higher education in Nevada and allow the Legislature to change existing higher education policies and procedures. For example, legislation was introduced in recent years to have Regents be appointed instead of elected, to break up NSHE with separate governing bodies for the colleges and universities, and to replace the Chancellor's office with a new bureaucracy in Carson City.*

~~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.~~ *Finally, the modification of the provisions regarding Land Grant funds is necessary with the removal of the Board of Regents from the Nevada Constitution but has little effect because the State of Nevada must follow federal law in the administration of those funds.*

Keep the Nevada Constitution the same and maintain the constitutional status *and elections* of the Board of Regents. Vote "No" on Question 1.

These changes will make the arguments For (552 words after edits, 488 before) and Against (571 words after edits, 470 before) more balanced, accurate, and persuasive. With input from a colleague who teaches professional writing, we believe that the reorganization and rewording improve the clarity of the arguments.

FISCAL NOTE (issue highlighted)

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.

The mandated biennial audits will have a significant cost. The minimum cost of an audit sufficient to satisfy the constitutional requirement can be determined with a reasonable degree of certainty based on the Legislative audit completed in 2022. We recommend the following change:

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.

The biennial audits of NSHE required by Question 1 would have a significant cost, which would depend on the scope of the audits as specified by future legislation. A partial legislative audit conducted in 2022 of only the non-state NSHE accounts for the years 2018 to 2021 cost approximately \$_____.

Explanation & Digest

Finally, although we have not provided detailed comments on the Explanation and Digest, we believe all the constitutional ballot questions should indicate clearly to voters whether they have been proposed by the Legislature and therefore would be enacted with one vote in favor, versus petition amendments that are on the first or second vote.

Thank you for your consideration.

Nevada System of Higher Education

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June 4, 2024

Haley Proehl, Senior Policy Analyst
Legislative Counsel Bureau, Research Division
401 South Carson Street
Carson City, Nevada 89701-4747

RE: Comments on Draft Language for Question 1 on the 2024 Ballot

Dear Legislative Counsel Bureau:

Thank you for the opportunity to provide comments on the proposed language of Question No. 1 on the 2024 Ballot (SJR7 of the 81st Session). On behalf of the Nevada System of Higher Education (NSHE), we appreciate being able to contribute to this important discussion regarding the governance and oversight of Nevada's public higher education institutions.

After reviewing the Question 1 Ballot Language, please accept our comments and request for factual revisions set forth herein. Consistent with NRS 281A.520, the comments and requests for revision provided herein are not intended to support or oppose this ballot initiative and should not be construed as such support or opposition.

As you know, NSHE is already subject to robust oversight and accountability measures from the Legislature. Most recently, in late 2022, NSHE underwent three (3) separate audits from the Legislative Counsel Bureau (LCB). NSHE welcomed this partnership with the Legislature and agreed with and accepted all recommendations for improving NSHE processes. NSHE is fully committed to transparency in the System's governance and we look forward to continuing our work with you.

As such, we respectfully suggest the following language for the CONDENSATION (Ballot Question) section of Question 1:

Shall Article 11 of the *Nevada Constitution* be amended to remove the 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 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. While the removal of these provisions of the *Nevada Constitution* would not repeal any existing statutory provisions governing the Board of Regents, future legislation could.

It is in the spirit of greater transparency that voters see clearly, in the Condensation section, the specific provisions that are to be removed from the *Nevada Constitution*. This above language is

indeed already included in the current Explanation & Digest. This proposed language also aligns more closely with the language used in Question 1 of the 2020 Ballot, which is nearly identical to the current measure and shares the same title. We believe the revised language provided above sets forth a more comprehensive and transparent overview of the proposed changes, ensuring that voters are well-informed about the implications of their decision.

We would also like to address some of the Arguments for Passage of this proposed ballot language. One argument inaccurately suggests that NSHE conducts itself as a “fourth branch of government.” This assertion is factually incorrect. NSHE is a full participant in the Executive Branch of the State government and acknowledges its role within this structure. To imply NSHE refuses to do so could be misunderstood by voters to be allegations of illegal and/or unconstitutional conduct. We firmly reject this characterization and request its deletion as factually inaccurate and misleading.

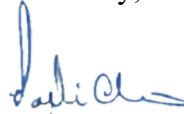
Another argument erroneously states, “...since at least the 1970s, Board policies regarding student credit transfers have resulted in the loss of credits for some students when transferring between NSHE institutions, leading to unnecessary and costly barriers to the completion of degrees.” This is patently false. Under the Board’s leadership and focus, which has been consistent through the last two decades, NSHE has established multiple safeguards to protect transferability between its institutions.

In 2000, the Board passed a common course numbering (CCN) policy that was implemented in 2001. This ensures that common courses are numbered the same across the System, regardless of NSHE institution where they are taught, thus simplifying the credit articulation process for students and institutions. Likewise, NSHE institutions have a long history of maintaining transfer agreements between its two- and four-year institutions, including a Board policy that requires any new bachelor’s program proposals to come forward with transfer agreements in place prior to approval. This has resulted in improved alignment between associate and baccalaureate degrees and a simplified transfer process for students, which has ultimately reduced time to degree completion. At the Board’s direction, a series of transfer-related audits undertaken between 2006 and 2019 helped to provide evidence for improved policy. The most recent audit demonstrated that 95.4% of the existing 593 transfer agreements allowed students to transfer with nominal or no credits lost.

In conclusion, we respectfully urge the Legislative Counsel Bureau to consider our recommendations. These changes will enhance voter understanding and contribute to a more transparent and informed electoral process.

Thank you for your attention to this matter. We look forward to continuing to work collaboratively with the Legislature to enhance the governance and oversight of public higher education in Nevada. No matter the outcome in November, NSHE remains committed to fulfilling its mission of providing quality education and fostering academic excellence across our institutions.

Sincerely,



Patricia Charlton
Interim Chancellor

From: Amy M Pason <[REDACTED]>
Sent: Monday, June 3, 2024 12:18 PM
To: Proehl, Haley <[REDACTED]>
Subject: Re: Draft Statewide Ballot Questions - Request for Review and Comment

Haley:

Thank you for the opportunity to provide feedback on the ballot language. My specific interest is in Question 1, and attached is a pdf with comments and suggested language changes. My aim with language changes was to remove language that was misleading or not supported by fact, and to direct points given in affirmative ways (not being combative or insinuating any bad intent by another side). The goal for ballot language, I believe, is to provide voters with the best information (they'll get enough misleading discourse in campaign ads!).

Please let me know if you have any additional questions—hopefully these suggestions can be of help,

Amy

[Amy Pason, PhD](#)

Associate Professor, Department of Communication Studies
University of Nevada, Reno
[REDACTED]

Pronouns: She/Her

Chair, Faculty Diversity Committee
Vice Chair, Graduate Council

Past-Chair, Freedom of Expression and Political Communication Interest Group
Western States Communication Association

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.~~

Shall Article 11 of the Nevada Constitution be amended to: (1) remove provisions governing the election and duties of the Board of Regents and its control and management of the State University and require the Legislature to provide by law for the governance of the State University; (2) to require biennial audits of the public institutions of higher education in the State; and (3) to revise the administration of certain federal land grant proceeds dedicated for the benefit of certain departments of the State University?

Yes No

Commented [AP1]: Revise the language in the condensation to be more direct on what exactly is being asked and what it does. This language mirrors the 2020 ballot condensation, and is similar to the beginning of the explanation below. Certainly, it could also be noted that the question would not automatically change other statutes, but might be best to have it simple to start. The constitution also does not directly refer to NSHE, so using "state university" here as that is the language in the Constitution currently.

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. Question 1 would mandate that the Legislature provide for the governance of NSHE, giving the Legislature the ability to change the governance structure to be more responsive to the State's interests.

Commented [AP2]: Currently no arguments been made on how this will change/improve NSHE; no data to support what, if any, improvements are needed. Misleading statement.

Commented [AP3]: For at least a decade, NSHE has worked with the Common Course numbering system and coordinating transfer agreements between institution to ensure students would not lose credits. I think the recent statistic is that most students are able to transfer in 90% + of their credits from the 2-year to 4-year institutions to be able to complete degrees in timely ways. This example is no longer relevant and its inclusion is misleading to voters.

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. In 2022, the Legislature completed an audit of NSHE non-state funding accounts, and found that current Board policy was vague or insufficient, which gave latitude to institutions contributing to variation amongst institutions. Institutions moved state funds without ensuring consistency in type of activity, comingled restricted and nonrestricted funds, and utilized student fees in ways inconsistent with Board policies. Question 1 will require an audit every two years, ensuring accountability and transparency in the fiscal management of NSHE.~~

Commented [AP4]: Pulling from the same Audit summary as the original language here, but highlighting different areas of the findings. The main remedies from the audit was for the Board to update policies to get rid of the latitude or ways institutions moved money to make ends meet...so that is the area of the audit that should be highlighted.

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 does not go against~~ the federal Morrill Land Grant Act of 1862 ~~without changing~~ not change 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 ~~would insert the Legislature into higher education governance in ways contrary to best practices and shared governance as defined by the American Association of University Professors (AAUP). The AAUP recognizes shared responsibility for the governance of higher education exists among governing boards, institution administration, and educational faculty, with roles of Legislatures limited to laws related to public funding or elections related to Boards. In drafting the Constitution, framers included a structure that is recognized as current best practice for higher education governance by naming a Board of Regents in the Constitution, 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 from six to four 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 Legislature recently conducted an audit of NSHE; no special constitutional authority was required and no other state agency has an audit requirement in the Constitution.

Commented [AP5]: I’m not sure that this will clarify anything. There is certainly not a “modernize” element to any of this (other than updating something written in 1864). “Modernize” is a buzz word that could mislead voters as it suggests some type of improvement/change to education or updating that doesn’t exist if this is passed. As proponents have claimed, nothing automatically changes with the passage of this question other than changing text of the Constitution, so arguments that suggest improvement or changes are misleading.

Commented [AP6]: Original language is combative and makes assumptions of intent (“power grab”) that can be misleading. Arguments for and against should be frame in positive gains (what will happen) rather than negative “other side is bad” ways.

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.

Commented [AP7]: Moving idea to paragraph that is all about changes/possible downsides. Keep this paragraph about positive current Board structure.

~~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.~~

Commented [AP8]: This argument is not really that important as no changes of compliance to federal law would occur—states without constitutional provisions still are compliant with Land Grant provisions. The money component is also noted in the fiscal note section below, so not so much needed here.

Proponents of Question 1 emphasize that no immediate changes would occur to the Board of Regents because their constitutional duties and powers are also specified in statutes. However, in past sessions, the Legislature has already signaled proposed changes to higher education governance including proposing an appointed Board, divide the NSHE system and have separate governing bodies or Board of Trustees for each institution, replacing the Chancellor's office with a new bureaucracy in Carson City, or even suggesting that institutions should be funded based on building square footage per student rather than on educational mission needs. These proposed changes could cost tax payers more money and remove efficiencies (such as transferring credits between institutions) that the current single system has been able to achieve. Approving Question 1 may also embolden legislators to interfere in areas of higher education related to curriculum, instruction, or institutional policies contrary to best practices defined by AAUP. Academic freedom, ability to pursue research that benefits the State, or ability to retain expert faculty can be jeopardized with increased Legislative interference in higher education.

Commented [AP9]: SB347/2023, AB350/2019, SB354/2019

Commented [AP10]: This is a stronger argument against passage, representing current events occurring in other states that is likely on the minds of voters.

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.

Question 1 also requires biennial auditing of public higher education, which does come with a cost. The specific cost would depend on the scope of audits specified by future legislation. The cost of the audit conducted on a subset of higher education accounts in 2022 cost [X].

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.

Commented [AP11]: Audits do cost money—if it is conducted by institutions or by legislature, still would assume state money to pay for it. Providing what the last audit cost could at least give voters some ideas of what such things might cost.

View results

Respondent



Time to complete

1. Your Name *

David Damore

2. Address

3. City

4. State

5. Zip code

6. Email address *

7. Phone number

8. Comments on draft language of Question 1 (Senate Joint Resolution 7 [2021])
(4,000 character limit)

Members of the Legislative Commission,

I am writing to encourage your body to implement the proposed ballot language for Question 1.

The proposed language is consistent with the authorizing legislation (Senate Joint Resolution 7 (2021)) that passed by wide margins in both chambers of the Nevada Legislature during the 2021 and 2023 legislative sessions. Specifically, the proposed ballot language highlights the intent of the Legislature to amend the Nevada Constitution to increase accountability over higher education through regular independent audits of Nevada System of Higher Education (NSHE) institutions. The proposed language also notes that Question 1 would not alter the statutorily defined election of the Board of Regents.

The clarity of the proposed language for Question 1 stands in contrast to Question 1 that appeared on the 2020 ballot proposing to remove the Board of Regents' constitutional authority to govern the State University (e.g., NSHE). While similar in intent, the 2020 version of Question 1 was substantially longer (105 words compared to 61 words) and included three enumerated sub-sections, while failing to note that passage of Question 1 would not change the statute defining the popular election of the Board of Regents.

Consistent with scholarship suggesting that longer and more convoluted ballot language decreases voter participation, inspection of the 2020 election results suggests that the length and content of the 2020 version of Question 1 may have deterred some voters from participating.

Despite being the first question listed on the 2020 ballot and being the only measure during the cycle that engendered some level of campaign activity — a factor that typically increases participation — Question 1 received the fewest total votes among the five questions that appeared on the 2020 ballot.

Over 150,000 voters who participated in the 2020 election did not register a vote for or against Question 1. Compared to the ballot question that immediately followed Question 1, nearly 60,000 voters who did not register a vote for Question 1 did so for Question 2. Question 3, the ballot question that received the second lowest total number of votes, received over 22,000 more votes than Question 1.

In closing, regardless if one favors or opposes Question 1, the proposed language makes clear why the Legislature is placing the question before the voters and explains the effects that the passage of Question 1 would have on the manner by which the members of the Board of Regents are selected. This language should significantly reduce uncertainty that voters may have about how Question 1 will alter the management and oversight of higher education in Nevada.

Thank you for your time and consideration.

David F. Damore

Executive Director, The Lincy Institute and Brookings Mountain West
Professor of Political Science and Lincy Presidential Chair

9. Comments on draft language of Question 2 (Assembly Joint Resolution 1 [2021])
(4,000 character limit)


10. Comments on draft language of Question 4 (Assembly Joint Resolution 10 [2021])
(4,000 character limit)

11. Comments on draft language of Question 5 (Senate Bill 428 [2023])
(4,000 character limit)

View results

Respondent




Time to complete

1. Your Name *

Lisa C. Levine

2. Address



3. City

Las Vegas

4. State

Nevada

5. Zip code

89109

6. Email address *



7. Phone number



8. Comments on draft language of Question 1 (Senate Joint Resolution 7 [2021]) (4,000 character limit)

After serving on the Nevada system of higher education board of regents for a year during the pandemic, I write to personally express my full support of the proposed ballot language for the Question 1 Measure. This ballot language is clear, concise, and will help Nevadans understand the intent of this ballot question when they vote this November. During the 2020 election Question 1 had one of the highest drop offs of all ballot measures because the language was confusing, which several public polls demonstrated. This language will increase voter participation and encourage Nevadans to read it and make their voice heard through voting. Thank you for your support of this proposed ballot language for the question 1 measure.

9. Comments on draft language of Question 2 (Assembly Joint Resolution 1 [2021])
(4,000 character limit)

10. Comments on draft language of Question 4 (Assembly Joint Resolution 10 [2021])
(4,000 character limit)

11. Comments on draft language of Question 5 (Senate Bill 428 [2023])
(4,000 character limit)

View results

Respondent



Time to complete



1. Your Name *

The Las Vegas Asian Chamber of Commerce, Ana Wood, Government Affairs Chair

2. Address

[Redacted]

3. City

Las Vegas

4. State

NV

5. Zip code

89146

6. Email address *

[Redacted]

7. Phone number

[Redacted]

8. Comments on draft language of Question 1 (Senate Joint Resolution 7 [2021])
(4,000 character limit)

The Las Vegas Asian Chamber of Commerce supports the language as written for Question 1. This improved ballot measure language is clear, concise, and will be easy for Nevadans to understand when they go to vote this November.

In the 2020 election the Question 1 ballot measure had the largest drop-off of all ballot measures that year due to confusing language that deterred voter participation.

Further, the Asian Chamber supports question 1 because a stronger higher education system through governance reform will increase overall confidence in our colleges and universities, therefore strengthening Nevada, our current and future job force, and the families served by a thriving economy.

Thank you!

9. Comments on draft language of Question 2 (Assembly Joint Resolution 1 [2021])
(4,000 character limit)

10. Comments on draft language of Question 4 (Assembly Joint Resolution 10 [2021])
(4,000 character limit)

11. Comments on draft language of Question 5 (Senate Bill 428 [2023])
(4,000 character limit)

View results

Respondent




Time to complete

1. Your Name *

Maureen E. Schafer

2. Address

[Redacted]

3. City

Las Vegas

4. State

Nevada

5. Zip code

89144

6. Email address *

[Redacted]

7. Phone number

[Redacted]

8. Comments on draft language of Question 1 (Senate Joint Resolution 7 [2021])
(4,000 character limit)

Members of the Legislative Commission,

I am writing to support the passage of the proposed ballot Question 1.

The proposed language is aligned with authorizing legislation (Senate Joint Resolution 7 (2021) that passed by majority margins in both chambers of the Nevada Legislature during the 2021 and 2023 legislative sessions. The proposed ballot language follows the intent of the Legislature to increase accountability over higher education through regular independent audits of Nevada System of Higher Education (NSHE) institutions. The proposed language also defines that Question 1 would not change the ability to elect the Board of Regents.

The current 2023 Question 1 is far more clear than the Question 1 that appeared on the 2020 ballot. While similar in intent, the 2020 version of Question 1 was longer (105 words compared to 61 words) and did not clarify that passage of Question 1 would not change the statute defining the popular election of the Board of Regents.

While the 2020 Question 1 was the first on the ballot, it received the least amount of votes of all 5 ballot questions in 2020, showing it was confusing in its writing and long for a ballot question.

Whether a voter supports or opposes Question 1 in 2024, the proposed language is clear in its intent, explaining its effects and that the voters will still be able to elect the Regents regardless of the outcome. Therefore, the language also reduces concern over the future management of higher education in Nevada.

Thank you for the opportunity to submit these comments

9. Comments on draft language of Question 2 (Assembly Joint Resolution 1 [2021])
(4,000 character limit)


10. Comments on draft language of Question 4 (Assembly Joint Resolution 10 [2021])
(4,000 character limit)

11. Comments on draft language of Question 5 (Senate Bill 428 [2023])
(4,000 character limit)

View results

Respondent




Time to complete

1. Your Name *

John Vellardita representing Clark County Education Association

2. Address

[Redacted]

3. City

Las Vegas

4. State

NV

5. Zip code

89121

6. Email address *

[Redacted]

7. Phone number

[Redacted]

8. Comments on draft language of Question 1 (Senate Joint Resolution 7 [2021])
(4,000 character limit)

This ballot measure language is clear, concise, and will be easy for Nevadans to understand when they go to vote this November.

We saw in the 2020 election that the Question 1 ballot measure had the largest drop off of all measures that year due to confusing language that deterred voter participation.

This is straightforward commonsense and CCEA supports question 1 because a stronger higher education system through governance reform will strengthen Nevada's ability to succeed. Thank you for your support.

9. Comments on draft language of Question 2 (Assembly Joint Resolution 1 [2021])
(4,000 character limit)

10. Comments on draft language of Question 4 (Assembly Joint Resolution 10 [2021])
(4,000 character limit)

11. Comments on draft language of Question 5 (Senate Bill 428 [2023])
(4,000 character limit)

Ballot Question No. 1

After Consideration of Public Comment,
LCB's **Revised Draft** of Ballot Materials for
Senate Joint Resolution No. 7 of the 81st Session
for Consideration by the Legislative Commission
Pursuant to NRS 218D.810

EXPLANATION OF FORMATTING IN REVISED DRAFT

1. Matter in ***bolded italics*** is language to be added to ballot materials;
and
2. Matter between brackets ~~strike-through~~ is language to be
removed from ballot materials.

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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 *its administration of the State University and certain federal land grant funds and to* provide ~~[greater accountability through regular independent audits]~~ *additional legislative oversight* of public institutions of higher education ~~[? The removal of these provisions of the Nevada Constitution would not change]~~ *through regular independent audits, without repealing* the current statutory election process ~~[of]~~ *or other existing statutory provisions relating to* 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.

1 A “Yes” vote would amend the *Nevada Constitution* by: (1) removing provisions governing
2 the election and duties of the Board of Regents and its control and management of the affairs
3 and funds of the State University and requiring the Legislature to provide by law for the
4 governance of the State University and for the auditing of public higher education
5 institutions in Nevada; and (2) revising provisions governing the administration of certain
6 funding derived under federal law and dedicated for the benefit of certain departments of
7 the State University.

8
9 A “No” vote would retain existing provisions of the *Nevada Constitution* governing the
10 election and duties of the Board of Regents and its control and management of the affairs
11 and funds of the State University and would not revise existing provisions governing the
12 administration of certain funding derived under federal law and dedicated for the benefit of
13 certain departments of the State University.

14
15
16 **DIGEST**—The *Nevada Constitution* requires the Legislature to provide for the establishment of
17 a State University that is controlled by a Board of Regents whose duties are prescribed by statute.
18 (Nev. Const. Art. 11, § 4) The *Nevada Constitution* also requires the Legislature to provide for the
19 election of members of the Board and provides for the Board to control and manage the affairs and
20 funds of the State University under regulations established by law. (Nev. Const. Art. 11, §§ 7, 8)

21
22 As required by these constitutional provisions, the Legislature has enacted laws to establish the
23 State University and to provide for the election of the members of the Board of Regents.
24 (*Nevada Revised Statutes* [NRS] 396.020, 396.040) In addition, the Legislature has enacted laws
25 to: (1) establish the Nevada System of Higher Education (NSHE), which consists of the
26 State University and certain other educational institutions, programs and operations; and
27 (2) provide for the Board of Regents to administer NSHE and to prescribe rules for its governance
28 and management. (NRS 396.020, 396.110, 396.230, 396.280, 396.300, 396.420, 396.440,
29 396.550)

30
31 This ballot measure would remove the constitutional provisions governing the Board of Regents
32 and would require the Legislature to provide by statute for the governance of the State University
33 and for the auditing of public higher education institutions. This ballot measure would not repeal
34 any existing statutory provisions governing the Board of Regents, including those that provide for
35 the election of Board members. Rather, by removing the constitutional provisions governing the
36 Board of Regents, this ballot measure would make the Board a statutory body whose structure,
37 membership, powers and duties are governed by those existing statutory provisions, subject to any
38 statutory changes made through the legislative process.

39
40 Under the federal Morrill Land Grant Act of 1862, each state was provided with certain federal
41 land grants to be sold to support and maintain at least one college in the state that teaches both
42 agriculture and mechanic arts, including military tactics, so long as the state agrees to certain terms
43 and conditions regarding the preservation and use of the proceeds derived from the sale of the
44 federal land grants. (Act of July 2, 1862, ch. 130, §§ 1-8, 12 Stat. 503-05, as amended and codified
45 at 7 U.S.C. §§ 301 et seq.) To secure the benefits offered by the federal law, the
46 *Nevada Constitution* provides that the funding derived by the State of Nevada under the federal

1 law must be invested in a separate fund and dedicated for the benefit of the appropriate departments
2 of the State University, and that if any amount of the separate fund is lost or misappropriated
3 through neglect or any other reason, the State of Nevada must replace the lost or
4 misappropriated amount. (Nev. Const. Art. 11, § 8) This ballot measure would revise these
5 provisions by: (1) clarifying the legal citations to the federal law, including all amendments by
6 Congress; and (2) specifying that the funding derived under the federal law must be invested by the
7 State of Nevada in the manner required by law. However, because the State of Nevada must
8 administer the funding in the manner required by the federal law, this ballot measure would not
9 change the purpose or use of the funding under the federal law. (*State of Wyoming v. Irvine*,
10 206 U.S. 278, 282-84 (1907))

11 12 13 ARGUMENTS FOR PASSAGE

14
15 Voting in favor of Question 1 will allow for additional legislative oversight and accountability of
16 the Board of Regents to improve ~~[the State's entire system of public higher education.]~~ *public*
17 *higher education in Nevada. Question 1 would mandate that the Legislature provide for the*
18 *governance of the State University, giving the Legislature the ability to change the policies and*
19 *procedures of the Nevada System of Higher Education (NSHE) to be more responsive to the*
20 *higher education needs of the State.*

21
22 For years, the Legislature has received complaints about the Board's policies and practices, and
23 the Board has taken actions that have obstructed or undermined the Legislature's investigation and
24 review of ~~[the Nevada System of Higher Education (NSHE). For example, since at least the 1970s,~~
25 ~~Board policies regarding student credit transfers have resulted in the loss of credits for some~~
26 ~~students when transferring between NSHE institutions, leading to unnecessary and costly barriers~~
27 ~~to the completion of degrees. If the Board's control and management of the State University were~~
28 ~~subject to the same level of legislative oversight typically applied to other government agencies,~~
29 ~~the Legislature would have the power to change any of the Board's policies and procedures that~~
30 ~~are unresponsive to the higher education needs of the State.]~~ *NSHE. The Board's actions have*
31 *also led to controversies around the failure of the Board to hold NSHE and its colleges and*
32 *universities to high standards of transparency and accountability and failed searches for Board*
33 *leadership. Passage of Question 1 would enable the Legislature to address concerns*
34 *surrounding the Board and its members by changing any of the Board's policies and*
35 *procedures.*

36
37 ~~[Additionally,]~~ *In addition,* taxpayers and students will ultimately benefit from greater legislative
38 oversight of the Board's financial decisions by reducing the potential for further fiscal
39 mismanagement within NSHE. A recent ~~[NSHE]~~ *audit of NSHE* found that due to vague or
40 insufficient Board policies and a lack of systemwide oversight, NSHE institutions engaged in
41 questionable and inappropriate financial activities between 2018 and 2022, including moving state
42 funds between accounts ~~[that are not used]~~ *designated* for ~~[the same]~~ *different* purposes,
43 redirecting state funds to a different institution without legislative approval, taking action to avoid
44 returning unused funds to the State as required by law, and spending student fees in ways that do
45 not directly relate to the fees' purposes or enhance the education of the students who pay them.

1 *Question 1 will require an audit of NSHE every two years, improving accountability and*
2 *transparency in the fiscal management of NSHE.*

3
4 The framers of the *Nevada Constitution* never intended for the Board to have absolute control over
5 the management of the State University. Granting constitutional powers to the Board was simply
6 related to accessing federal land grant funding ~~[under the Morrill Land Grant Act of 1862]~~ without
7 requiring action by the Legislature. However, the Board has asserted in cases before the Nevada
8 Supreme Court that its constitutional status gives it virtual autonomy and thus immunity from
9 certain laws and policies enacted by the Legislature. Based on legislative testimony, there is an
10 impression that the Board uses its constitutional status as a shield against additional legislative
11 oversight and accountability and even conducts itself as a fourth branch of government though the
12 *Nevada Constitution* specifies only the Executive, Legislative, and Judicial Branches of State
13 government. *Passage of Question 1 will prevent the Board from using its current constitutional*
14 *status to protect NSHE from legislative scrutiny.*

15
16 ~~[Finally, Question 1 will clarify and modernize existing provisions of the *Nevada Constitution*~~
17 ~~relating to the administration of the federal land grant proceeds dedicated for the benefit of certain~~
18 ~~departments of the State University under the federal Morrill Land Grant Act of 1862 without~~
19 ~~changing the purpose or use of those proceeds and without violating federal law.]~~

20
21 Improve our public higher education system by allowing for greater accountability, transparency
22 and oversight of the system. Vote “Yes” on Question 1.

23 24 25 **ARGUMENTS AGAINST PASSAGE**

26
27 Proponents of Question 1 want voters to believe that the framers of the *Nevada Constitution* got it
28 wrong, and that the Legislature’s involvement will somehow improve the transparency, efficiency
29 and effectiveness of Nevada’s higher education system. Unfortunately, passage of this ballot
30 question does not guarantee any of these promised benefits. Question 1 is nothing but the
31 Legislature trying to gain more power and control, and it would only serve to add political
32 pressures to a governance system that is serving this State well. Previous attempts to change higher
33 education governance, including a *similar* 2020 ballot question to remove the constitutional status
34 of the Board of Regents, have failed because Nevadans recognize the importance of keeping the
35 system in the *Nevada Constitution* as originally drafted.

36
37 *Academic freedom is under unprecedented attack around the country. The ability to*
38 *independently pursue research that benefits the State or to retain expert faculty may be*
39 *jeopardized with increased legislative influence in higher education. By removing the*
40 *constitutional status of the Board of Regents from the Nevada Constitution, Question 1*
41 *increases the potential for political interference over curriculum and academic standards in our*
42 *public colleges and universities.*

43
44 *The Board of Regents is best equipped to establish policy for the Nevada System of Higher*
45 *Education (NSHE) because its sole focus is on higher education. The Board has governed our*
46 *higher education system for over 150 years as the system has grown in size, prestige, and*
47 *complexity, and in that time, outcomes have improved. It does not make sense to risk losing the*

1 *Board's independence, institutional knowledge, and expertise with no assurance of what the*
2 *Legislature may put in its place. Furthermore, there is no evidence that the Legislature, which*
3 *meets only once every other year, would be more effective at establishing higher education policy*
4 *than the elected Regents.*

5
6 The Board is already subject to considerable legislative oversight and accountability. For example,
7 the Legislature recently passed legislation to alter the Board's composition from 13 to 9 members
8 and reduce member terms ~~[by two]~~ *from six to four* years. The Board must also explain and justify
9 its financial management decisions to the Legislature ~~[in a manner similar to other Executive~~
10 ~~Branch agencies,]~~ and the Legislature retains the ultimate power of the purse to determine the
11 amount of state funding for higher education. *Finally, the Legislature already has the ability to*
12 *require audits of NSHE as evidenced by the Legislature's recent audit of NSHE. Because the*
13 *Legislature has demonstrated its ability to oversee the Board and hold it accountable, the*
14 *constitutional requirement for audits and the removal of the constitutional status of the Board*
15 *are not necessary.*

16
17 The Board's current status in the *Nevada Constitution* ensures that the Board remains elected,
18 responsible to the voters, and responsive to constituents. Passage of Question 1 would allow the
19 Legislature to change existing higher education policies and procedures and even allow
20 the Legislature to make members of the Board appointed rather than elected. ~~[The sole focus of~~
21 ~~the Board is on higher education policy, and it is best equipped to govern NSHE. The Board has~~
22 ~~governed our higher education system for over 150 years as the system has grown in size, prestige~~
23 ~~and complexity, and in that time, higher education outcomes have improved. It does not make~~
24 ~~sense to risk losing the Board's independence, institutional knowledge and expertise with no~~
25 ~~assurance of what the Legislature may put in its place.~~

26
27 ~~Finally, the framers of the Nevada Constitution named the Board as the proper trustee to administer~~
28 ~~the federal land grant proceeds dedicated for the benefit of certain departments of the~~
29 ~~State University under the federal Morrill Land Grant Act of 1862. By removing the Board as~~
30 ~~the constitutionally designated trustee, this ballot question would allow the Legislature to name~~
31 ~~any other Executive Branch agencies or officers as a statutory trustee, whether or not they have~~
32 ~~any experience, knowledge or understanding of the higher education system or its funding needs.~~
33 ~~Such a deviation from the intent of the framers could be a recipe for fiscal irresponsibility and~~
34 ~~mismanagement, which could potentially jeopardize the State's compliance with the federal law.]~~

35
36 Keep the ~~[Nevada Constitution the same and maintain the constitutional]~~ status *and election* of the
37 Board of Regents ~~[]~~ *in the Nevada Constitution.* Vote "No" on Question 1.

38
39
40 **FISCAL NOTE**

41
42 **Financial Impact—Cannot Be Determined**

43
44 If approved by the voters, Question 1 removes provisions governing the election and duties of the
45 Board of Regents and its control and management of the affairs and funds of the State University

1 from the *Nevada Constitution* and requires the Legislature to provide by law for the governance
2 of the State University and for the auditing of public higher education institutions in Nevada.

3
4 Future actions, if any, taken by the Legislature regarding the governance of the State University
5 ~~[or the auditing of public higher education institutions in Nevada]~~ cannot be predicted. Thus, the
6 resulting financial impact upon State government, if any, cannot be determined with any
7 reasonable degree of certainty.

8
9 *The provisions of Question 1 requiring the Legislature to provide for biennial auditing of the*
10 *State University and other public institutions of higher education in Nevada will have a*
11 *financial effect upon the State government. However, because it is unknown what factors the*
12 *Legislature may use in determining the scope of each biennial audit, the resultant cost to the*
13 *State to pay for these audits cannot be determined with any reasonable degree of certainty.*

14
15 Finally, this ballot question clarifies existing provisions of the *Nevada Constitution* relating to the
16 administration of the federal land grant proceeds dedicated for the benefit of certain departments
17 of the State University under the federal Morrill Land Grant Act of 1862. However, because the
18 State of Nevada must administer those proceeds in the manner required by the federal law, this
19 ballot question will not change the purpose or use of those proceeds under the federal law. Thus,
20 there is no anticipated financial impact upon State government from these revisions if Question 1
21 is approved by the voters.