

## STATE QUESTION NO. 4

### **Amendment to the Nevada Constitution** Assembly Joint Resolution No. 3 of the 74th Session

Shall Article 1, Section 22 of the *Nevada Constitution* be repealed and shall Article 1, Section 8 of the *Nevada Constitution* be amended to revise provisions relating to eminent domain proceedings?

Yes       No

#### **EXPLANATION**

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

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

Additionally, the proposed amendment defines the terms "fair market value" and "just compensation" and provides for the manner of computing these amounts. It also stipulates that neither party may be held liable for the other party's attorney's fees in eminent domain proceedings except in the circumstance of an inverse condemnation, wherein a property owner

makes a request for attorney's fees in a legal action. The proposed amendment revises from 5 years to 15 years the amount of time within which the entity that took the property must put it to use before the property must be offered to, and will revert to, the original owner upon payment of the original purchase price.

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

**A "YES" vote would repeal Article 1, Section 22 of the *Nevada Constitution* and amend Article 1, Section 8 of the *Nevada Constitution* relating to eminent domain proceedings.**

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

### **ARGUMENT ADVOCATING PASSAGE**

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

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

## ARGUMENT OPPOSING PASSAGE

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

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

## FISCAL NOTE

### Financial Impact – Cannot be Determined

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

- Allowing the direct or indirect transfer of any interest in private property to another private person or entity as a public use in certain circumstances, as specified in the proposed constitutional amendment;
- Removing the right for property owners to preempt one judge at the district court level and one judge at each appellate level in any eminent domain action; and
- Requiring that property taken by eminent domain must be offered to, and reverts to, the person from whom the property was taken, upon repayment of the purchase price, if the entity who took the property fails to use the property within 15 years after obtaining possession of the property.

These proposed changes relating to eminent domain proceedings may affect the number of eminent domain proceedings that are undertaken by the State and local governments. However, because the number of eminent domain actions that may be undertaken cannot be estimated, the financial effect upon the State and local governments cannot be determined with any reasonable degree of certainty.

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