State of Nevada

STATEWIDE
BALLOT QUESTIONS

2016

To Appear on the November 8, 2016 General Election Ballot

Issued by

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Secretary of State

STATE OF NEVADA

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Dear Fellow Nevadan:

As the November 8, 2016, general election approaches, it is my responsibility as the state's Chief Elections Officer to ensure voters have all the information necessary to make informed decisions on the four statewide ballot questions that will be presented to them this year. Accordingly, my office has prepared this informational booklet that provides the exact wording and a brief summary of each question, as well as fiscal notes detailing the potential financial impacts to the State of Nevada. Arguments for and against passage of each ballot question are also provided.

For your reference, Ballot Question Numbers 1 and 2 propose new statute or amend existing statute and qualified for the ballot through initiative petitions filed in 2014. Both petitions were presented to the Nevada Legislature in 2015 but were not acted upon and therefore will be presented to the voters.

Ballot Question Numbers 3 and 4 propose amendments to the *Nevada Constitution* and qualified for the ballot through initiative petitions filed in 2016. If successful at this election, these questions will appear again on the 2018 general election ballot.

I encourage you to carefully review and consider each of the ballot questions prior to Election Day on November 8, 2016. As a voter, your decisions on these ballot questions are very important, as they may create new laws, amend existing laws, or amend the *Nevada Constitution*.

Thank you for your attention on this important matter. If you require additional information, please do not hesitate to contact my office at (775) 684-5705, or visit my website: www.nvsos.gov.

Respectfully,

Barbara K. Cegavske

BARBARA K. CEGAVSKE
Secretary of State

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2016
STATEWIDE BALLOT QUESTIONS SUMMARY

Question #	Title	Originated	If Passed in 2016
1	The Background Check Initiative	Initiative Petition	Becomes Law
2	Initiative to Regulate and Tax Marijuana	Initiative Petition	Becomes Law
3	The Energy Choice Initiative	Initiative Petition	Will go to the 2018 General Election Ballot
4	Medical Patient Tax Relief Act	Initiative Petition	Will go to the 2018 General Election Ballot

STATE QUESTION NO. 1

Amendment to Title 15 of the *Nevada Revised Statutes*

Shall Chapter 202 of the *Nevada Revised Statutes* be amended to prohibit, except in certain circumstances, a person from selling or transferring a firearm to another person unless a federally-licensed dealer first conducts a federal background check on the potential buyer or transferee?

Yes ☐ No ☐

EXPLANATION & DIGEST

EXPLANATION—This ballot measure proposes to amend Chapter 202 of the *Nevada Revised Statutes* to prohibit, except in certain defined circumstances, any person who is not a licensed dealer, importer, or manufacture of firearms from selling or transferring a firearm to another unlicensed person unless a licensed dealer first conducts a background check on the buyer or transferee. To request the required background check, the law would require both the seller/transferor and the buyer/transferee to appear jointly with the firearm before a federally licensed firearms dealer. The background check would be conducted using the National Instant Criminal Background Check System administered by the Federal Bureau of Investigations (FBI), and the federally-licensed dealer would be able to charge a reasonable fee for conducting the background check and facilitating the firearm transfer between unlicensed persons.

The measure would establish various exemptions to the mandatory background check requirements, including:

- The sale or transfer of a firearm by or to any law enforcement agency;
- To the extent he or she is acting within the course and scope of his or her employment and official duties, the sale or transfer of a firearm by or to any peace officer, security guard entitled to carry a weapon, member of the armed forces, and federal official;
- The sale or transfer of an antique firearm;
- The sale or transfer of a firearm between immediate family members, defined as spouses and domestic partners, as well as parents, children, siblings, grandparents, grandchildren, aunts, uncles, nieces, and nephews, whether whole or half blood, adoption or step-relation; and
- The transfer of a firearm to an executor, administrator, trustee, or personal representative of an estate or trust that occurs by operation of law upon the death of the former owner of the firearm.

Certain temporary transfers of a firearm without a background check would also be allowed under the measure, as long as the temporary transfer is to a person who is not prohibited from

buying or possessing a firearm under state or federal law, the transferor has no reason to believe that the transferee is prohibited from buying or possessing firearms under state or federal law, and the transferor has no reason to believe that the transferee will use or intends to use the firearm in the commission of a crime. Allowable temporary transfers would include:

- Temporary transfers required to prevent imminent death or great bodily harm;
- Temporary transfers at an established shooting range authorized by the governing body of the jurisdiction in which the range is located;
- Temporary transfers at a lawfully organized competition involving the use of a firearm;
- Temporary transfers while participating in or practicing for a performance by an organized group that uses firearms as part of a public performance;
- Temporary transfers while hunting or trapping if the transfer occurs in the area where hunting and trapping is legal and the transferee holds all licenses or permits required for such hunting or trapping; and
- Temporary transfers while in the presence of the transferor.

Lastly, approval of this ballot measure would establish criminal penalties on an unlicensed person who sells or transfers one or more firearms to another unlicensed person in violation of the provisions of the measure. For the first conviction involving the sale or transfer of one or more firearms, the seller or transferor would be guilty of a gross misdemeanor, punishable by up to a year in county jail, a fine up $1,000, or both imprisonment and a fine. For the second and each subsequent conviction, the seller or transferor would be guilty of a category C felony, which is punishable by imprisonment between one and five years in state prison and a fine of not more than $10,000.

A "Yes" vote would amend Chapter 202 of the *Nevada Revised Statutes* to prohibit, except in certain circumstances, any person who is not a licensed dealer, importer, or manufacture of firearms from selling or transferring a firearm to another unlicensed person unless a licensed dealer first conducts a background check on the buyer or transferee.

A "No" vote would retain the provisions of Chapter 202 of the *Nevada Revised Statutes* in their current form. These provisions currently allow, but do not require, a background check be performed on a firearm buyer or transferee before the private sale or transfer of a firearm.

DIGEST— Chapter 202 of the *Nevada Revised Statutes* contains provisions relating to crimes against public health and safety. Approval of this ballot measure would amend Chapter 202 of the *Nevada Revised Statutes* to require that a federal background check be performed before private sales and transfers of firearms, except in certain defined circumstances. In order to obtain a required background check, both the firearm seller/transferor and the firearm buyer/transferee would be required to appear together before a federally licensed firearms dealer. The background check would be conducted using the National Instant Criminal Background Check System administered by the Federal Bureau of Investigations (FBI), and the

federally-licensed dealer would be able to charge a reasonable fee for conducting the background check and facilitating the firearm transfer. A person who violates the new background check requirements would be guilty of a gross misdemeanor for the first offence and a category C felony for the second or subsequent offences. It is undetermined at this time whether approval of this ballot measure would have any impact on public revenue.

If this ballot measure is approved, the following sales or transfers would be exempt from the background check requirement: firearm sales or transfers between law enforcement agencies, peace officers, security guards, armed forces members, and federal officials; the sale or transfer of an antique firearm; the sale or transfer of a firearm between immediate family members; the transfer of a firearm to an estate or trust that occurs upon the death of the former owner of the firearm; temporary firearm transfers to prevent imminent death or great bodily harm; and temporary firearm transfers at authorized shooting ranges, at lawful firearm competitions, for use in public performances; while hunting or trapping, or while in the presence of the transferor.

Current Nevada law, found in Chapter 202 of the *Nevada Revised Statutes*, allows, but does not require, a private person who wishes to transfer a firearm to another person to request a background check from the Central Repository for Nevada Records of Criminal History on the person who wishes to acquire the firearm. If a background check is requested, the Central Repository has five days to perform the background check and notify the person who requested the background check if the receipt of a firearm by the person who wished to acquire the firearm would violate a state or federal law. The current law allows the Central Repository to charge a reasonable fee for performing a requested background check.

ARGUMENT FOR PASSAGE

The Background Check Initiative

Vote yes on Question 1.

Vote yes on Question 1 and close the loophole that makes it easy for convicted felons, domestic abusers, and people with severe mental illness to buy guns without a criminal background check.

It is illegal for these dangerous people to buy guns.[1] That's why criminal background checks are required for every gun sale from a licensed dealer.[2] But no background check is required in Nevada if a person buys a gun from an unlicensed seller, including buying from a stranger they meet online or at a gun show.

Question 1 would create a level playing field where everyone would have to follow the same rules, whether they buy and sell at a gun store, at a gun show, or using the Internet.

Voting yes on Question 1 protects our rights and meets our responsibilities.

We have the right to bear arms. And with rights come responsibilities, including the responsibility to keep guns out of the hands of felons, domestic abusers, and the severely mentally ill.

Question 1 won't stop all gun violence—nothing will. But in states that require criminal background checks for all handgun sales, almost 50% fewer police are killed with handguns[3] and about half as many women are shot to death by abusive partners.[4]

Since 1980, over 50% of police officers murdered with guns in the line of duty in Nevada were shot by people who would have likely failed a background check.[5]

There are more than 35,000 guns for sale in Nevada each year on just four websites—and no background check is required for most of these sales.[6] Question 1 closes these loopholes.

No Nevada tax dollars will be used to conduct Question 1 background checks because the checks will be run by the FBI.

The Nevada Association of Public Safety Officers and Las Vegas Fraternal Order of Police—representing thousands of law enforcement officers—urge yes on Question 1.[7]

Nevada doctors[8], crime victims[9], the Nevada Parent Teacher Association[10], and the Nevada State Education Association[11] all agree—passing Question 1 will help save lives.

We need to close this dangerous loophole and make sure criminal background checks are required on all gun sales in Nevada. Please vote yes on Question 1.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Matt Griffin (Chair), Nevadans for Background Checks; Justin Jones, private citizen; Elaine Wynn, Nevadans for Background Checks. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact. This argument, with active hyperlinks, can be found at www.nvsos.gov.

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[1] 18 U.S.C. § 922(g); Nev. Rev. Stat. § 202.360.
[2] 18 U.S.C. § 922(t).
[3] Everytown for Gun Safety Support Fund, *State Background Check Requirements and Firearm Homicide Against Law Enforcement,* January 15, 2015, http://every.tw/1FpRqkh.
[4] Everytown for Gun Safety Support Fund, *State Background Check Requirements and Rates of Domestic Violence Homicide,* January 15, 2015, http://every.tw/1y3kxCb.
[5] Everytown for Gun Safety Support Fund, *Nevada Law Enforcement Deaths and Illegal Guns,* November 9, 2015, http://every.tw/1q2kqck.
[6] Everytown for Gun Safety Support Fund, *The Wild Wild Web: Investigating Online Gun Markets in Nevada,* January 29, 2016, http://every.tw/26XLqeY.

[7] Letter from the Nevada Association of Public Safety Officers, January 12, 2016; and Letter from the Las Vegas Fraternal Order of Police.
[8] Letter from Nevadans for Background Checks; and Letter from the Nevada Public Health Association, April 19, 2016.
[9] Letter from Nevadans for Background Checks.
[10] Letter from Nevada Parent Teacher Association, February 2, 2016.
[11] Letter from the Nevada State Education Association, April 11, 2016.

REBUTTAL TO ARGUMENT FOR PASSAGE

Question 1 will do nothing to promote public safety. It is about destroying the Second Amendment freedoms of law-abiding Nevadans by out-of-state gun control groups.[1]

Criminals, by definition, do not obey laws.

U.S. Department of Justice statistics show that criminals obtain guns illegally--through straw-purchasers, theft, and the black market.[2] Question 1 does nothing to stop these methods of obtaining guns.

The supporters of Question 1 mislead Nevada voters by arguing that this initiative is about gun sales to violent criminals and the mentally ill. If this were about violent criminals and gun sales, supporters would have written the initiative to focus on sales, but they chose instead to cover all transfers, including those between friends and family.

Prohibiting someone from loaning a gun to a friend for an afternoon of target shooting or to go hunting – without a background check – will do nothing to stop violent crime. Rather, it advances another stated goal of gun control groups: establishing a federal registry of gun owners across America.

Supporters of Question 1 use self-generated statistics in their attempts to fool the public into ignoring the base, common-sense reality that criminals will not be dissuaded from violent crime if Question 1 passes.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee members: Daniel Reid (Chair), NRA Nevadans for Freedom; Blayne Osborn, private citizen; Don Turner, Nevada Firearms Coalition. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact. This rebuttal, with active hyperlinks, can be found at www.nvsos.gov.

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[1] Nevadans for Background Checks, Contributions and Expenses Report, Nevada Secretary of State web page available at: https://nvsos.gov/SOSCandidateServices/AnonymousAccess/CEFDSearchUU/GroupDetails.aspx?o=xLkkWMf4XkrEVN%252bbfpbfTQ%253d%253d.

[2] *Special Report: Firearm Violence, 1993-2011,* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, May 2013, http://www.bjs.gov/content/pub/pdf/fv9311.pdf; *Guns Used in Crime,* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, July 1995, http://www.bjs.gov/content/pub/pdf/GUIC.PDF; and *Following the Gun: Enforcing Federal Laws against Firearms Traffickers,* Department of the Treasury, Bureau of Alcohol, Tobacco & Firearms, June 2000, http://everytown.org/wp-content/uploads/2014/08/Following-the-Gun_Enforcing-Federal-Laws-Against-Firearms-Traffickers.pdf.

ARGUMENT AGAINST PASSAGE

Question 1 is not what its supporters claim it is and *goes well beyond sales to include loans, leases and gifts*. Imagine a soldier being required to run a background check on their fiancé or roommate just to store their firearms in anticipation of an upcoming deployment. That's exactly what this initiative will do. Or maybe you'd like to loan your firearm to a friend of 20 years to go target shooting on BLM land. Again, Question 1 would mandate that you run a background check on this trusted friend.

Question 1 goes even further than that. *If passed, this new law would require Nevadans to appear jointly at a federal firearms dealer who may charge a fee anytime they relinquish possession of a firearm and to have it returned*.[1] Failure to do so will constitute a serious crime and up to a year in prison. This complex, unenforceable, and overly burdensome change places more bureaucratic restrictions on law abiding citizens while not impacting criminals.

Under current law, federal firearms dealers are required to run a background check when selling a firearm regardless of where the transfer takes place.[2] Question 1 would expand this to include private transfers of a firearm, all to be conducted through a federal firearms dealer and subject to fees.[3] In the case of loaning a firearm to your friend for a target shooting trip, this would mean each of you making two separate trips to a federal firearms dealer and two separate fees just to loan and return the firearm.[4] There are no limits to the fees that can be charged for the two mandated trips.[5]

If supporters of Question 1 were truly interested in stopping crime, QUESTION 1 WOULD HAVE BEEN WRITTEN TO TARGET CRIMINAL ACTIVITY, NOT TO ENSNARE THE INNOCENT. Question 1 will expose law-abiding Nevadans to criminal penalties and burdensome costs without making our state any safer.

The supporters of Question 1 have given no regard to fixing the current system and focusing attention on criminals. During a 2014 hearing in the legislature, it was revealed that 800,000 criminal records were missing from the current state crime database.[6] Instead of addressing this obvious failure in the system, Question 1 targets law-abiding citizens and otherwise legal behavior.

Question 1 won't make Nevada safer. Laws that target criminals or criminal behavior are what reduce crime and promote public safety. Question 1 does neither.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee members: Daniel Reid (Chair), NRA Nevadans for Freedom; Blayne Osborn, private citizen; Don Turner, Nevada Firearms Coalition. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact. This argument, with active hyperlinks, can be found at www.nvsos.gov.

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[1] The Background Check Initiative.
[2] 18 U.S.C. § 922(t).
[3] The Background Check Initiative.
[4] Id.
[5] Id.
[6] *Report: Nevada repository missing thousands of criminal records,* Las Vegas Review Journal, June 20, 2014, http://www.reviewjournal.com/news/nevada/report-nevada-repository-missing-thousands-criminal-records.

REBUTTAL TO ARGUMENT AGAINST PASSAGE

Opponents of Question 1 are trying to confuse voters, but Question 1 will make Nevada safer.

Background checks work, and they're convenient for law-abiding gun owners.

Over the last three years, background checks at Nevada gun dealers blocked 5,379 gun sales to criminals and other dangerous people who cannot legally buy guns, including felons, domestic abusers, and people with dangerous mental illness.[1]

But under current law, dangerous people can avoid background checks and buy guns from strangers they meet online or at gun shows, no questions asked.

Question 1 closes that loophole, requiring all gun sellers to play by the same rules.

Question 1 will help save lives. In states with background checks for all handgun sales, 48% fewer law enforcement officers are killed with handguns,[2] and 46% fewer women are shot to death by abusive partners.[3]

Background checks are quick and easy. 97.1% of Nevadans live within 10 miles of a gun dealer.[4] And over 90% of FBI background checks are completed on the spot.[5]

We have a right to bear arms and a responsibility to keep guns away from criminals, domestic abusers, and people with dangerous mental illness.

YES on Question 1 will make our communities safer.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Matt Griffin

(Chair), Nevadans for Background Checks; Justin Jones, private citizen; Elaine Wynn, Nevadans for Background Checks. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact. This rebuttal, with active hyperlinks, can be found at www.nvsos.gov.

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[1] Everytown for Gun Safety Support Fund, *Gun Violence and Background Checks in Nevada*, August 27, 2015, https://everytownresearch.org/gun-violence-and-background-checks-in-nevada/.
[2] Everytown for Gun Safety Support Fund, *State Background Check Requirements and Firearm Homicide against Law Enforcement*, January 15, 2015, http://every.tw/1FpRqkh.
[3] Everytown for Gun Safety Support Fund, *State Background Check Requirements and Rates of Domestic Violence Homicide*, January 15, 2015, http://every.tw/1y3kxCb.
[4] Everytown for Gun Safety Support Fund analysis of U.S. Census data, May 2015. (There are 515 federally licensed gun dealers in Nevada able to conduct background checks on unlicensed sales. Bureau of Alcohol, Tobacco, Firearms and Explosives, data for type 1 and 2 FFL licenses in Nevada in May 2015, http://1.usa.gov/1JOixGK.)
[5] U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, *2014 NICS Operations Report*, http://bit.ly/29YNKMh.

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

OVERVIEW

Question 1 proposes to amend various sections of the *Nevada Revised Statutes* to require that a background check be conducted by a licensed dealer before a firearm is transferred from one unlicensed person to another unlicensed person (private-party sales) under certain circumstances. Question 1 also establishes criminal penalties for violations of these provisions by unlicensed persons who sell or transfer firearms.

FINANCIAL IMPACT OF QUESTION 1

Pursuant to the provisions of the federal Brady Handgun Violence Prevention Act (Public Law 103-159), federally licensed firearm dealers are required to obtain a background check on an individual before a firearm may be purchased by that person. The law requires that the background check be conducted either directly through the National Instant Criminal Background Check System (NICS) maintained by the Federal Bureau of Investigation (FBI), or through a point of contact (POC) established within each state.

The Department of Public Safety has indicated that the Department's Criminal History Repository (CHR) serves as Nevada's POC based on the provisions of the Brady Act. As a result of this POC status, licensed firearm dealers contact the CHR to initiate background checks on retail firearm sales instead of contacting NICS directly. Currently, the CHR assesses a $25 fee for each background check that is conducted for this purpose.

The Department of Public Safety has indicated that passage of Question 1 would require a renegotiation of POC status or the development of an alternative agreement with the FBI in

order to accommodate the provisions of the question. Based on this requirement, the Fiscal Analysis Division has identified three potential scenarios that could occur due to the implementation of Question 1:

1. If the agreement between the State and the FBI required the CHR to perform all background checks, it would result in additional expenditures of approximately $650,000 per year. However, the Department has estimated that the additional revenue that would be generated from the $25 fee imposed on the private-party background checks would be sufficient to defray these expenditures, which would result in no financial impact upon state government.

2. If the agreement between the State and the FBI allows licensed firearms dealers to contact NICS directly to conduct federal background checks for private-party sales, but allows the State to maintain POC status and continue to conduct background checks through the CHR for all other sales by licensed firearm dealers as is currently required by federal law, there would be no financial impact upon state government.

3. If the agreement between the State and the FBI removes Nevada's POC status under the Brady Act, licensed firearms dealers would be required to contact NICS directly to obtain background check information for retail and private-party sales rather than contacting the CHR. The Department has indicated that, if licensed dealers are required to access NICS directly for background checks on all gun sales, this would result in the elimination of approximately 13 positions and a loss in revenue of approximately $2.7 million per year, which is used to support the current operations of the CHR. This loss in revenue would result in a negative financial impact upon state government, as additional revenue would be required from the State General Fund or other sources to supplant revenues used to support the CHR's functions.

Because the Fiscal Analysis Division cannot determine what agreement may be reached between the Department and the FBI with respect to Nevada's status as a POC state under the Brady Act, the resultant financial impact upon state government cannot be determined with any reasonable degree of certainty.

The provisions creating misdemeanor and felony provisions for violations of the requirements of Question 1 may increase the workload of various state and local government agencies with respect to enforcement, investigation, incarceration, probation, and parole. The Department of Corrections, the Department of Public Safety, and the Fiscal Analysis Division are unable to determine the number of persons who may be investigated, prosecuted, or incarcerated as a result of violations of these provisions. Thus, the resultant financial effect upon state and local government cannot be determined with any reasonable degree of certainty.

The provisions creating misdemeanor and felony provisions for violations of the requirements of Question 1 will require two changes to the Nevada Offense Codes used in the CHR. The

Department of Public Safety has indicated that these changes can be accommodated with existing staff, and that no additional financial impact would be incurred by the Department.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – August 12, 2016

THE BACKGROUND CHECK INITIATIVE

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

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. Sections 1 to 8, inclusive, of this act may be cited as The Background Check Act.

Sec. 2. The People of Nevada do hereby find and declare that:

1. To promote public safety, federal law currently prohibits felons, domestic abusers, the severely mentally ill, and other dangerous people from buying or possessing firearms;
2. Federally licensed firearms dealers are required to run background checks on their prospective buyers to ensure they are not prohibited from buying or possessing firearms;
3. Criminals and other dangerous people can avoid background checks by buying guns from unlicensed firearms sellers, whom they can easily meet online or at gun shows and who are not legally required to run background checks before selling or transferring firearms;
4. Due to this loophole, millions of guns exchange hands each year in the United States without a background check;
5. The background check process is quick and convenient: Over 90% of federal background checks are completed instantaneously and over 97% of Nevadans live within 10 miles of a licensed gun dealer;
6. We have the right to bear arms, but with rights come responsibilities, including the responsibility to keep guns out of the hands of convicted felons and domestic abusers;
7. To promote public safety and protect our communities, and to create a fair, level playing field for all gun sellers, the people of Nevada find it necessary to more effectively enforce current law prohibiting dangerous persons from purchasing and possessing firearms by requiring background checks on all firearms sales and transfers, with reasonable exceptions, including for immediate family members, hunting, and self-defense.

Sec. 3. Chapter 202 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 6, inclusive, of this act.

Sec. 4. ***As used NRS 202.254 and sections 4, 5 and 6 of this act, unless the context otherwise requires:***

1. "Central Repository" has the meaning ascribed to it in NRS 179A.045.

2. "Hunting" has the meaning ascribed to it in NRS 501.050.

3. "Licensed dealer" means a person who holds a license as a dealer in firearms issued pursuant to 18 U.S.C. § 923(a).

4. "National Instant Criminal Background Check System" has the meaning ascribed to it in NRS 179A.062.

5. "Transferee" means an unlicensed person who wishes or intends to receive a firearm from another unlicensed person.

6. "Transferor" means an unlicensed person who wishes or intends to transfer a firearm to another unlicensed person.

7. "Trapping" has the meaning ascribed to it in NRS 501.090.

8. "Unlicensed person" means a person who does not hold a license as a dealer, importer, or manufacturer in firearms issued pursuant to 18 U.S.C. § 923(a).

Sec. 5. ***The provisions of NRS 202.254 do not apply to:***

1. The sale or transfer of a firearm by or to any law enforcement agency and, to the extent he or she is acting within the course and scope of his or her employment and official duties, any peace officer, security guard entitled to carry a firearm under NAC 648.345, member of the armed forces, or federal official.

2. The sale or transfer of an antique firearm, as defined in 18 U.S.C. § 921(16).

3. The sale or transfer of a firearm between immediate family members, which for the purposes of this chapter means spouses and domestic partners and any of the following relations, whether by whole or half blood, adoption, or step-relation: parents, children, siblings, grandparents, grandchildren, aunts, uncles, nieces and nephews.

4. The transfer of a firearm to an executor, administrator, trustee, or personal representative of an estate or a trust that occurs by operation of law upon the death of the former owner of the firearm.

5. A temporary transfer of a firearm to a person who is not prohibited from buying or possessing firearms under state or federal law if such transfer:

(a) Is necessary to prevent imminent death or great bodily harm; and

(b) Lasts only as long as immediately necessary to prevent such imminent death or great bodily harm.

6. A temporary transfer of a firearm if:

(a) The transferor has no reason to believe that the transferee is prohibited from buying or possessing firearms under state or federal law;

(b) The transferor has no reason to believe that the transferee will use or intends to use the firearm in the commission of a crime; and

(c) Such transfer occurs and the transferee's possession of the firearm following the transfer is exclusively:

(1) At an established shooting range authorized by the governing body of the jurisdiction in which such range is located;

(2) At a lawful organized competition involving the use of a firearm;

(3) While participating in or practicing for a performance by an organized group that uses firearms as a part of the public performance;

(4) While hunting or trapping if the hunting or trapping is legal in all places where the transferee possesses the firearm and the transferee holds all licenses or permits required for such hunting or trapping; or

(5) While in the presence of the transferor.

Sec. 6. ***An unlicensed person who sells or voluntarily transfers one or more firearms to another unlicensed person in violation of NRS 202.254:***

1. For a first conviction involving the sale or transfer of one or more firearms, is guilty of a gross misdemeanor and shall be punished as provided in NRS 193.140; and

2. For a second or subsequent conviction involving the sale or transfer of one or more firearms, is guilty of a category C felony and shall be punished as provided in NRS 193.130(2)(c).

Sec. 7. NRS 202.254 is hereby amended to read as follows:

202.254 1. **[**~~A private person who wishes to transfer a firearm to another person may, before transferring the firearm, request that the Central Repository for Nevada Records of Criminal History perform a background check on the person who wishes to acquire the firearm.~~

~~2. The person who requests the information pursuant to subsection 1 shall provide the Central Repository with identifying information about the person who wishes to acquire the firearm.~~

~~3. Upon receiving a request from a private person pursuant to subsection 1 and the identifying information required pursuant to subsection 2, the Central Repository shall within 5 business days after receiving the request:~~

~~(a) Perform a background check on the person who wishes to acquire the firearm; and~~

~~(b) Notify the person who requests the information whether the information available to the Central Repository indicates that the receipt of a firearm by the person who wishes to acquire the firearm would violate a state or federal law.~~

~~4. If the person who requests the information does not receive notification from the Central Repository regarding the request within 5 business days after making the request, the person may presume that the receipt of a firearm by the person who wishes to acquire the firearm would not violate a state or federal law.~~

~~5. The Central Repository may not charge a fee for performing a background check and notifying a person of the results of the background check pursuant to this section.~~

~~6. A private person who transfers a firearm to another person is immune from civil liability for failing to request a background check pursuant to this section or for any act or omission relating to a background check requested pursuant to this section if the act or omission was taken in good faith and without malicious intent.~~

~~7. The Director of the Department of Public Safety may request an allocation from the Contingency Account pursuant to NRS 353.266, 353.268 and 353.269 to cover the costs incurred by the Department to carry out the provisions of subsection 5.]~~ ***Except as otherwise provided in section 5 of this act, an unlicensed person shall not sell or transfer a firearm to another unlicensed person unless a licensed dealer first conducts a background check on the buyer or transferee in compliance with this section.***

2. The seller or transferor and buyer or transferee shall appear jointly with the firearm and request that a licensed dealer conduct a background check on the buyer or transferee.

3. A licensed dealer who agrees to conduct a background check pursuant to this section shall take possession of the firearm and comply with all requirements of federal and state law as though the licensed dealer were selling or transferring the firearm from his or her own inventory to the buyer or transferee, including, but not limited to, all recordkeeping requirements, except that:

(a) The licensed dealer must contact the National Instant Criminal Background Check System, as described in 18 U.S.C. § 922(t), and not the Central Repository, to determine whether the buyer or transferee is eligible to purchase and possess firearms under state and federal law; and

(b) The seller or transferor may remove the firearm from the business premises while the background check is being conducted, provided that before the seller or transferor sells or transfers the firearm to the buyer or transferee, the seller or transferor and the buyer or transferee shall return to the licensed dealer who shall again take possession of the firearm prior to the completion of the sale or transfer.

4. A licensed dealer who agrees to conduct a background check pursuant to this section shall inform the seller or transferor and the buyer or transferee of the response from the National Instant Criminal Background Check System. If the response indicates that the buyer or transferee is ineligible to purchase or possess the firearm, the licensed dealer shall return the firearm to the seller or transferor and the seller or transferor shall not sell or transfer the firearm to the buyer or transferee.

5. A licensed dealer may charge a reasonable fee for conducting a background check and facilitating a firearm transfer between unlicensed persons pursuant to this section.

Sec. 8. If any provision of this act, or the application thereof to any person, thing or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 9. This act shall become effective on October 1, 2015, if approved by the legislature, or on January 1, 2017, if approved by the voters.

STATE QUESTION NO. 2

Amendment to the *Nevada Revised Statutes*

Shall the *Nevada Revised Statutes* be amended to allow a person, 21 years old or older, to purchase, cultivate, possess, or consume a certain amount of marijuana or concentrated marijuana, as well as manufacture, possess, use, transport, purchase, distribute, or sell marijuana paraphernalia; impose a 15 percent excise tax on wholesale sales of marijuana; require the regulation and licensing of marijuana cultivators, testing facilities, distributors, suppliers, and retailers; and provide for certain criminal penalties?

Yes ☐ No ☐

EXPLANATION & DIGEST

EXPLANATION—This ballot measure proposes to amend the *Nevada Revised Statutes* to make it lawful for a person 21 years of age or older to purchase and consume one ounce or less of marijuana other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana. It would also make it lawful for a person 21 years of age or older to cultivate not more than six marijuana plants for personal use, as well as obtain and use marijuana paraphernalia.

The ballot measure would also allow for the operation of marijuana establishments, which would be regulated by the Department of Taxation. Regulated marijuana establishments would include marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities, marijuana distributors, and retail marijuana stores. For the first 18 months, the Department of Taxation would only accept license applications for retail marijuana stores, marijuana product manufacturing facilities, and marijuana cultivation facilities from persons holding a medical marijuana establishment registration certificate. Similarly, for the first 18 months, the Department of Taxation would only issue marijuana distributors' licenses to persons holding a Nevada wholesale liquor dealers' license, unless the Department determines an insufficient number of marijuana distributors would result from this limitation.

If the ballot measure is approved, no marijuana establishments would be allowed within 1,000 feet of a public or private K-12 school or 300 feet of a community facility. There would also be limits on the number of retail marijuana store licenses issued in each county by the Department of Taxation. In a county with a population greater than 700,000, up to 80 retail marijuana store licenses would be allowed; in a county with a population greater than 100,000 but less than 700,000, up to 20 retail marijuana store licenses would be allowed; in a county with a population greater than 55,000 but less than 100,000, up to 4 retail marijuana store licenses would be allowed; and in a county with a population less than 55,000, up to 2 retail marijuana

store licenses would be allowed. At the request of a county government, the Department of Taxation may issue retail marijuana store licenses in excess of the number otherwise allowed.

In addition to licensing, the Department of Taxation would be charged with adopting regulations necessary to carry out the provisions of this ballot measure. The regulations must address licensing procedures; licensee qualifications; security of marijuana establishments; testing, labeling, and packaging requirements; reasonable restrictions on advertising; and civil penalties for violating any regulation adopted by the Department.

Approval of the ballot measure would not prevent the imposition of civil or criminal penalties for driving under the influence of marijuana; knowingly selling or giving marijuana to a person under 21 years of age; possessing or using marijuana or marijuana paraphernalia in state correctional centers; possessing or using marijuana on school grounds; or undertaking any task under the influence of marijuana that constitutes negligence or professional malpractice. The measure would also not prevent employers from enforcing marijuana bans for their workers; marijuana bans in public buildings or on private property; and localities from adopting control measures pertaining to zoning and land use for marijuana establishments.

Under the provisions of the ballot measure, all applicants for a marijuana establishment license would be required to pay a one-time application fee of $5,000. Additionally, the Department of Taxation may require the payment of an annual licensing fee ranging from $3,300 to $30,000, depending on type of license. The measure would also impose a 15 percent excise tax on wholesale sales of marijuana in Nevada by a marijuana cultivation facility. Revenue from this excise tax, as well as revenue from licensing fees and penalties collected by the Department of Taxation related to the regulation of marijuana, would first go to the Department of Taxation and local governments to cover the costs of carrying out the provisions of this measure. Any remaining revenue would be deposited in the State Distributive School Account.

Lastly, this ballot measure would impose criminal penalties for certain violations related to the possession, use, sale, and cultivation of marijuana and marijuana plants. Criminal offenses would include violations of the marijuana cultivation laws set forth in the measure; public consumption of marijuana; a person falsely representing himself or herself to be 21 years of age or older in order to obtain marijuana; and knowingly giving marijuana to a person under 21 years of age.

A "Yes" vote would amend the *Nevada Revised Statutes* to allow a person, 21 years old or older, to purchase, cultivate, possess, or consume a certain amount of marijuana or concentrated marijuana, as well as manufacture, possess, use, transport, purchase, distribute, or sell marijuana paraphernalia; impose a 15 percent excise tax on wholesale sales of marijuana; require the regulation and licensing of marijuana cultivators, testing facilities, distributors, suppliers, and retailers; and provide for certain criminal penalties.

A "No" vote would retain the provisions of the *Nevada Revised Statutes* in their current form. These provisions prohibit the possession, use, cultivation, and sale or delivery of marijuana in

the State of Nevada for non-medical purposes, as well as the possession, use, sale, delivery, or manufacture of marijuana paraphernalia for non-medical purposes.

DIGEST—Chapter 453 of the *Nevada Revised Statutes*, known as the Uniform Controlled Substances Act, concerns the classification, enforcement, regulation, and offenses related to marijuana. Approval of this ballot measure would amend the *Nevada Revised Statutes* to make it lawful for a person 21 years of age or older to purchase and consume one ounce or less of marijuana other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana. It would also make it lawful for a person 21 years of age or older to cultivate not more than six marijuana plants for personal use, as well as obtain and use marijuana paraphernalia. Approval of this ballot measure would increase public revenue due to revenue collections from license fees for marijuana establishments and the 15 percent wholesale marijuana excise tax.

The ballot measure would also allow for the operation of marijuana establishments, which would be regulated by the Department of Taxation. Regulated marijuana establishments would include marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities, marijuana distributors, and retail marijuana stores. In addition to licensing, the Department of Taxation would be charged with adopting regulations necessary to carry out the provisions of this ballot measure. The regulations must address licensing procedures; licensee qualifications; security of marijuana establishments; testing, labeling, and packaging requirements; reasonable restrictions on advertising; and civil penalties for violating any regulation adopted by the Department.

Under the provisions of the ballot measure, all applicants for a marijuana establishment license would be required to pay a one-time application fee of $5,000. Additionally, the Department of Taxation may require the payment of an annual licensing fee ranging from $3,300 to $30,000, depending on type of license. The measure would also impose a 15 percent excise tax on wholesale sales of marijuana in Nevada by a marijuana cultivation facility. Revenue from this excise tax, as well as revenue from licensing fees and penalties collected by the Department of Taxation related to the regulation of marijuana, would first go to the Department of Taxation and local governments to cover the costs of carrying out the provisions of this measure. Any remaining revenue would be deposited in the State Distributive School Account.

Approval of this ballot measure would impose criminal penalties for certain violations related to the possession, use, sale, and cultivation of marijuana and marijuana plants. Criminal offenses would include violations of the marijuana cultivation laws set forth in the measure; public consumption of marijuana; a person falsely representing himself or herself to be 21 years of age or older in order to obtain marijuana; and knowingly giving marijuana to a person under 21 years of age.

Current Nevada law, found in Chapter 453 of the *Nevada Revised Statutes*, prohibits various actions related to marijuana. Under current law, possession of marijuana for personal use is prohibited. Current law also prohibits the sale or delivery of marijuana; the cultivation of

marijuana plants; and the possession, use, sale, delivery, or manufacture of marijuana paraphernalia for non-medical purposes. Possession and use of hashish and marijuana concentrates is also prohibited under current Nevada law. Criminal and civil penalties are provided for in current law for violations of the marijuana prohibitions established in Chapter 453 of the *Nevada Revised Statutes*.

ARGUMENT FOR PASSAGE

Initiative to Regulate and Tax Marijuana

Vote Yes On 2! Question 2 will benefit Nevada by regulating marijuana in a manner similar to alcohol:

- It makes possession of small amounts of marijuana legal for adults 21 years of age or older;
- It establishes strict rules for the cultivation, production, distribution, and sale of marijuana in Nevada; and
- It will generate millions of dollars in new tax revenue to support K-12 education.

Question 2 is a sensible change in law for the state.

Marijuana prohibition is a failed policy in every sense of the word. Our government took a substance less harmful than alcohol[1] and made it completely illegal. This resulted in the growth of a multi-billion-dollar underground market driven by drug cartels and criminals operating in our communities. We have forced law enforcement to focus on the sale and use of marijuana instead of on serious, violent, and unsolved crimes.

Question 2 is a better way. We need to eliminate the criminal market by shifting the production and sale of marijuana into the hands of tightly regulated Nevada businesses, who will be required to comply with state and local laws, including environmental standards.

By regulating marijuana like alcohol, marijuana businesses will be required to:

- Test marijuana products to ensure that they are safe and properly labeled;
- Sell marijuana products in child-resistant packaging; and
- Check identification of customers to ensure marijuana is not sold to minors.

None of that occurs in the illegal market.

The initiative provides for a 15% excise tax on marijuana, which will generate an estimated $20 million annually.[2] This will cover the cost of enforcing regulations and will also support K-12 education in the state. In addition to this tax, legal marijuana sales will generate more than $30 million annually in state and local sales tax revenue.[3]

To enhance public safety, the initiative:

- Leaves in place Nevada's strict laws against driving under the influence of marijuana;
- Allows employers to have policies against the use of marijuana by employees;
- Prohibits the use of marijuana in public; and
- Imposes significant penalties for distribution of marijuana to minors.

It's time to stop punishing adults who use marijuana responsibly. This initiative will accomplish that goal in a manner that protects consumers, enhances public safety, provides for local control, generates tax revenue, and creates thousands of new jobs in the state. Vote Yes on 2!

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Amanda Connor (Chair), private citizen; Riana Durrett, Riana Durrett PLLC; and John Ritter, Coalition to Regulate Marijuana Like Alcohol. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

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[1] *Marijuana is Less Harmful than Alcohol: It's Time to Treat it that Way,* Regulate Marijuana Like Alcohol in Nevada, https://www.regulatemarijuanainnevada.org/safer/.
[2] *Nevada Adult-Use Marijuana; Economic & Fiscal Benefits Analysis, July 2016,* RCG Economics and Marijuana Policy Group, p. ES-5.
[3] Id.

REBUTTAL TO ARGUMENT FOR PASSAGE

Question 2 is nothing more than a power grab from mostly out-of-state special interests who want to get rich. It even legalizes pot candies and allows pot advertising.

This initiative lets marijuana businesses line their pockets while the black market thrives. Legalization has done nothing to end the black market in Colorado, and has even allowed Mexican cartels to hide in plain sight.[1] In Denver, drug and narcotics crime rose an average of 13% per year since 2014.[2]

Question 2 also isn't about personal freedom – instead, it makes it a crime to home-cultivate pot within 25 miles of a retail marijuana store, and it doesn't even allow for local "opt-out" provisions as Colorado did.

Enriching marijuana business executives won't be a boon for K-12 education, either. Projected annual tax revenues from pot sales won't be enough to build even one Nevada middle school.[3] Exposing our children to industrially-produced, kid-friendly pot gummy bears is not worth it.

Finally, Nevada taxpayers don't need a new government-run bureaucracy with troubling long-term societal costs.

At the end of the day, Question 2 benefits Big Marijuana at your expense. Vote NO--it's bad for Nevada's children, families, and taxpayers.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee members: Pat Hickey (Chair), Nevadans for Responsible Drug Policy; Pam Graber, private citizen; and Kyle Stephens, Nevadans for Responsible Drug Policy. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

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[1] *Marijuana grow connected to Mexican cartel dismantled south of Pueblo,* The Denver Post, July 7, 2016, http://www.denverpost.com/2016/07/07/illegal-marijuana-grow-mexican-cartel-confiscated-pueblo/; *Mexican Drug Cartels are taking full advantage of Colorado's marijuana laws,* Denver7, April 7, 2016, http://www.thedenverchannel.com/news/local-news/marijuana/mexican-drug-cartels-are-taking-full-advantage-of-colorados-marijuana-laws; and *Feds worry that drug cartels are moving into Colo,* USA Today, February 14, 2014, http://www.usatoday.com/story/news/nation/2014/02/14/colorado-pot-drug-cartels/5485421/.

[2] Crime Reports, City of Denver, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/statistics/2016/Xcitywide_Reported_Offenses_2016.pdf and https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/statistics/2015/Xcitywide_Reported_Offenses_2015.pdf.

[3] Email correspondence, Clark County School District, July 25, 2016.

ARGUMENT AGAINST PASSAGE

Vote NO on Question 2. It's bad for Nevada children, bad for Nevada families, and bad for Nevada taxpayers.

Question 2 is about one thing—making out-of-state pot companies rich at your expense. It will bring marijuana stores to your neighborhood allowing kid-friendly, pot gummy bears and candies.[1] It also allows the selling of high-potency pot—today's pot is more than 20 times stronger than the marijuana of the 1960s.[2] It gives shadowy corporations and Nevada's alcohol industry special monopoly-like powers, at the expense of ordinary Nevadans. Question 2 is funded and supported by special interests in Washington, D.C.[3], who simply want to get rich.

More specifically:

- Question 2 would allow marijuana shops in neighborhoods—where your children live—to sell pot-laced edibles that are easily mistaken for ordinary candy. Since Colorado legalized pot, marijuana use by youth is now ranked 56% higher than the national average.[4] Studies show THC, the psychoactive component in today's marijuana has devastating effects on the developing teenage brain.[5] So Question 2 isn't about protecting children, and would provide children with easier access to marijuana.

- Question 2 would permit new pot products with high potency levels. Fatal accidents involving stoned drivers have more than doubled in Washington where pot has been legalized.[6] Question 2 isn't about public health and safety. It's about marketing a harmful drug to people for profit.

- Studies show teenagers who regularly use marijuana have lower IQs[7] and higher dropout rates, and do worse on college entrance exams.[8] Nevada is currently near the bottom of most U.S. rankings in education. At a time when skilled graduates are needed to fill Nevada jobs, we can't afford to fall any further.

- Question 2 would give special treatment and benefits to corporate interests and select alcohol companies involved in recreational marijuana sales. So Question 2 isn't about business opportunities for average Nevadans, but about corporate handouts to a privileged few.

The black market for pot will not go away by legalizing marijuana. "We have plenty of cartel activity in Colorado [and] plenty of illegal activity that has not decreased at all," said Colorado Attorney General, Cynthia Coffman.[9]

Bottom line: Legalizing marijuana will send a message to Nevada's children and teens that drug use is acceptable.

Question 2 is bad for Nevada children, bad for Nevada's families, and bad for Nevada taxpayers. Just say NO, to Question 2.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee members: Pat Hickey (Chair), Nevadans for Responsible Drug Policy; Pam Graber, private citizen; and Kyle Stephens, Nevadans for Responsible Drug Policy. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

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[1] *Reefer Sanity in the Marijuana Debate,* Project SAM Presentation, Kevin A. Sabet. Ph.D.
[2] Id.
[3] Coalition to Regulate Marijuana Like Alcohol, Contributions and Expenses Report, Nevada Secretary of State web site available at: https://nvsos.gov/SOSCandidateServices/AnonymousAccess/CEFDSearchUU/GroupDetails.aspx?o=Yno8I9PHpIECbJmkeEEJ7w%253d%253d.
[4] *The Legalization of Marijuana in Colorado: The Impact*, Volume 3, Rocky Mountain High Intensity Drug Trafficking Area, September 2015, http://wsnia.org/wp-content/uploads/2015/09/The-Legalization-of-Marijuana-in-Colorado-the-Impact.pdf.
[5] *Reefer Sanity in the Marijuana Debate,* Project SAM Presentation, Kevin A. Sabet. Ph.D.
[6] *Fatal Road Crashes Involving Marijuana Double after State Legalizes Drug,* AAA Newsroom, May 10, 2016, http://newsroom.aaa.com/2016/05/fatal-road-crashes-involving-marijuana-double-state-legalizes-drug/.
[7] *Reefer Sanity in the Marijuana Debate,* Project SAM Presentation, Kevin A. Sabet. Ph.D.

[8] Cobb-Clark, Deborah A. and Kassenboehmer, Sonja C. and Le, Trinh and McVicar, Duncan and Zhang, Rong, *'High'-School: The Relationship between Early Marijuana Use and Educational Outcomes* (October 2013), Melbourne Institute Working Paper No. 38/13, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2359183.
[9] *Special report, 'Clearing the Haze:' Black market is thriving in Colorado,* The Gazette, March 20, 2015, http://gazette.com/special-report-clearing-the-haze-black-market-is-thriving-in-colorado/article/1548305.

REBUTTAL TO ARGUMENT AGAINST PASSAGE

"Reefer Madness." The term has been used for decades to describe exaggerated claims about marijuana that are designed to scare people into keeping marijuana illegal. We hope you recognize the argument above as modern-day Reefer Madness.

Here are just a few examples:

- The largest and most recent surveys of teen marijuana use showed that Colorado's marijuana use rate among high school students is actually below the national average.[1]

- Since Colorado regulated medical marijuana and then adult-use marijuana, high school dropout rates have actually fallen.[2]

- Regarding things like gummy bears, the argument above fails to mention that the Colorado legislature recently banned marijuana products shaped like animals (or other attractive figures)[3] and we expect thoughtful Nevada lawmakers will do the same.

- The argument above suggest that Question 2 would allow marijuana sales "where your children live," despite the fact that the measure gives all localities the ability to ban sales in residential districts.

Don't let opponents of Question 2 scare you into keeping marijuana illegal. That would simply leave the marijuana market in the hands of drug cartels and criminals. Let's put criminals out of business. Let's regulate marijuana and generate tax revenue for schools.

Please vote Yes on Question 2!

The above rebuttal was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Amanda Connor (Chair), private citizen; Riana Durrett, Riana Durrett PLLC; and John Ritter, Coalition to Regulate Marijuana Like Alcohol. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

[1] Healthy Kids Colorado Survey 2015, *Marijuana Use Among Youth in Colorado,* https://www.colorado.gov/pacific/sites/default/files/PF_Youth_MJ-Infographic-Digital.pdf.

[2] Colorado Department of Education, *Colorado Dropout Data Dashboard*, http://www2.cde.state.co.us/cdereval/dropoutdatamap2014.asp; and *Dropout Data for 2013-14 – Historical Overview,* http://www.cde.state.co.us/cdereval/dropoutcurrenthistory.
[3] *Ban On Pot Gummy Bears signed into Colorado Law,* CBS Denver 4, June 10, 2016, http://denver.cbslocal.com/2016/06/10/ban-on-pot-gummy-bears-signed-into-colorado-law/.

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

OVERVIEW

Question 2 proposes to amend the *Nevada Revised Statutes* to add several new sections that would require the Department of Taxation to regulate and administer the operation of facilities that cultivate, produce, and dispense marijuana products in the state. Question 2 additionally requires the Department to collect a 15 percent excise tax upon the wholesale value of marijuana sold by a marijuana cultivation facility in Nevada. The proceeds from the excise tax, less costs incurred by the Department of Taxation and counties, cities, and towns to carry out certain provisions of Question 2, must be deposited in the State Distributive School Account.

Question 2 also decriminalizes the personal use, possession, or cultivation of marijuana under certain circumstances and provides for criminal penalties related to the unlawful cultivation, consumption, manufacture, or distribution of marijuana.

FINANCIAL IMPACT OF QUESTION 2

State and local governments will receive additional revenue from the following provisions of Question 2:

1. The Department of Taxation shall collect a one-time fee of $5,000 from each applicant for a marijuana establishment license.
2. The Department of Taxation may impose fees for the initial issuance and annual renewal of marijuana establishment licenses for retail stores, cultivation facilities, product manufacturing facilities, distributors, and testing facilities, with the maximum fee that can be imposed for each license specified in Question 2.
3. An excise tax of 15 percent must be collected on the fair market wholesale value of marijuana sold by a marijuana cultivation facility and remitted to the Department of Taxation. The Department must establish regulations to determine the fair market wholesale value for marijuana in the state.
4. Marijuana, marijuana products, and marijuana paraphernalia sold as tangible personal property by a retail marijuana store would be subject to state and local sales and use taxes under current statute.

The proceeds from the application fee, license fees, and excise tax, less costs incurred by the Department of Taxation and counties, cities, and towns to carry out certain provisions of

Question 2, must be deposited in the State Distributive School Account. The proceeds from the state and local sales and use taxes generated on the retail sales of marijuana, marijuana products, and marijuana paraphernalia would be distributed to the state and local governments, including school districts, in the same manner these taxes are currently distributed.

The Department of Taxation and the Fiscal Analysis Division cannot determine the amount of revenue that will be generated for state and local governments, including school districts and the State Distributive School Account, from the application fee, licensee fees, excise tax, and sales and use taxes, because the following factors cannot be estimated with any reasonable degree of certainty:

1. The number of applications that would be received by the Department for marijuana establishment licenses;
2. The number of initial and annual licenses that would be issued by the Department and the amount of the fee that the Department would charge for each initial and annual license issued, if the Department decides to impose the license fees authorized within Question 2;
3. The quantity of marijuana that will be sold by marijuana cultivation facilities and the fair market value that will be established by the Department through the regulatory process that will be subject to the excise tax;
4. The quantity of marijuana, marijuana products, and marijuana paraphernalia and the price of these items that will be sold by retail marijuana stores that will be subject to state and local sales and use taxes.

Additionally, businesses that receive marijuana establishment licenses from the Department may also be subject to additional taxes and fees imposed by the state of Nevada or by local governments, including, but not limited to, the Modified Business Tax, the Commerce Tax, and state and local business license fees, which would increase revenues from these tax sources dedicated to the state or local government entity imposing the tax or fee. However, because the Fiscal Analysis Division cannot estimate the number of licenses that will be issued, the revenue that may be generated by the marijuana establishments, or the wages that may be paid to persons employed by the establishments, the resultant increase in revenues dedicated to the state and local governments cannot be determined with any reasonable degree of certainty.

The Fiscal Analysis Division has identified the following areas that may affect expenditures for state and local governments as a result of Question 2:

1. The Department of Taxation has indicated that it will incur one-time costs for equipment and programming of its computer system totaling approximately $600,000. The Department has also indicated that it will need an additional 14 positions to implement and administer these provisions, beginning on January 1, 2017, which, along with associated operating costs, would result in a cost of approximately $637,000 for the last six months of Fiscal Year 2017 (January 1, 2017–June 30, 2017) and approximately $1.1 million in each

subsequent fiscal year. The Department has estimated that the total costs for implementation and administration of Question 2 would be approximately $1.2 million in Fiscal Year 2017 (the first year in which the provisions would become effective), and approximately $1.1 million per fiscal year thereafter.

The Department has indicated that some expenditures will be required before revenue from the excise tax and fees authorized in Question 2 are collected; however, the Fiscal Analysis Division cannot determine how the Department will choose to implement Question 2, the timing of expenditures that will be incurred by the Department, or the method that will be used to fund these initial costs.

2. Question 2 requires the Department of Taxation to conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant. Question 2 also requires the operator of each marijuana establishment to determine the criminal history of each worker or volunteer for suitability of employment as established in Question 2. The Department of Public Safety has indicated that if it will be required to process the background checks, the caseload increase will require one to two additional positions, which would cost approximately $50,000 to $100,000 per fiscal year. However, the Fiscal Analysis Division cannot determine the process that the Department of Taxation will choose to conduct these background checks.

3. The provisions of Question 2 that criminalize and decriminalize certain actions related to marijuana will require changes to the Nevada Offense Codes used in the Central Repository for Nevada Records of Criminal History maintained by the Department of Public Safety. The Department of Public Safety has indicated that an independent contractor may be required to implement the changes to the Nevada Offense Codes, which would result in a financial impact of approximately $10,000 to $40,000, based on previous contracts for these types of services. The Fiscal Analysis Division has determined that a financial impact on state government may occur only if an independent contractor is used to make the changes to the Nevada Offense Codes.

4. The provisions of Question 2 that criminalize and decriminalize certain actions related to marijuana may increase or decrease the workload of various state and local government agencies with respect to enforcement, investigation, incarceration, probation, and parole. The Fiscal Analysis Division cannot determine the net effect of these provisions on the workload of these agencies with respect to these functions.

The Fiscal Analysis Division cannot determine what actions may be taken by state and local governments to carry out the provisions of Question 2, the amount of expenditures that may be incurred, or how those expenditures would be funded. However, Question 2 specifies that excise tax revenues, fees, or penalties collected must first be used to defray certain costs incurred by the Department of Taxation and counties, cities, and towns, with the excess revenue to be deposited in the State Distributive School Account. Additionally, state and local governments, including school districts, will receive sales and use tax revenue from the retail

sales of marijuana, marijuana products, and marijuana paraphernalia, as well as from other taxes and fees that may be paid by businesses that receive marijuana establishment licenses. Therefore, the Fiscal Analysis Division cannot determine the financial impact upon state or local governments, including school districts and the State Distributive Account, because the revenues and expenditures resulting from Question 2 cannot be estimated with any reasonable degree of certainty.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – August 12, 2016

INITIATIVE TO REGULATE AND TAX MARIJUANA

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

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. ***Sections 1 to 18, inclusive, of this act may be cited as the Regulation and Taxation of Marijuana Act.***

Sec. 2. ***In the interest of public health and public safety, and in order to better focus state and local law enforcement resources on crimes involving violence and personal property, the People of the State of Nevada find and declare that the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated similar to other legal businesses.***

The People of the State of Nevada find and declare that the cultivation and sale of marijuana should be taken from the domain of criminals and be regulated under a controlled system, where businesses will be taxed and the revenue will be dedicated to public education and the enforcement of the regulations of this act.

The People of the State of Nevada proclaim that marijuana should be regulated in a manner similar to alcohol so that:

1. Marijuana may only be purchased from a business that is licensed by the State of Nevada;

2. Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;

3. Cultivating, manufacturing, testing, transporting, and selling marijuana will be strictly controlled through state licensing and regulation;

4. Selling or giving marijuana to persons under 21 years of age shall remain illegal;

5. Individuals will have to be 21 years of age or older to purchase marijuana;

6. Driving under the influence of marijuana will remain illegal; and

7. Marijuana sold in the state will be tested and labeled.

Sec. 3. ***As used in sections 1 to 18, inclusive, of this act, unless the context otherwise requires:***

1. "Community facility" means a facility licensed to provide day care to children, a public park, a public playground, a public swimming pool, a center or facility the primary purpose of which is to provide recreational opportunities or services to children or adolescents, or a church, synagogue, or other building, structure, or place used for religious worship or other religious purpose.

2. "Concentrated marijuana" means the separated resin, whether crude or purified, obtained from marijuana.

3. "Consumer" means a person who is 21 years of age or older who purchases marijuana or marijuana products for use by persons 21 years of age or older, but not for resale to others.

4. "Department" means the Department of Taxation.

5. "Dual Licensee" means a person or group of persons who possess a current, valid registration certificate to operate a medical marijuana establishment pursuant to chapter 453A of NRS and a license to operate a marijuana establishment under sections 1 to 18, inclusive, of this act.

6. "Excluded felony offense" means a conviction of an offense that would constitute a category A felony if committed in Nevada or convictions for two or more offenses that would constitute felonies if committed in Nevada. "Excluded felony offense" does not include:

(a) A criminal offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed more than 10 years ago; or

(b) An offense involving conduct that would be immune from arrest, prosecution, or penalty pursuant to chapter 453A of NRS, except that the conduct occurred before the effective date of chapter 453A of NRS, or was prosecuted by an authority other than the State of Nevada.

7. "Locality" means a city or town, or, in reference to a location outside the boundaries of a city or town, a county.

8. "Marijuana" means all parts of any plant of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" does not include:

(a) The mature stems of the plant, fiber produced from the stems, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stems (except the resin extracted therefrom), fiber, oil, or cake, the sterilized seed of the plant which is incapable of germination; or

(b) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

9. "Marijuana cultivation facility" means an entity licensed to cultivate, process, and package marijuana, to have marijuana tested by a marijuana testing facility, and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

10. "Marijuana distributor" means an entity licensed to transport marijuana from a marijuana establishment to another marijuana establishment.

11. "Marijuana establishment" means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.

12. "Marijuana product manufacturing facility" means an entity licensed to purchase marijuana, manufacture, process, and package marijuana and marijuana products, and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

13. "Marijuana products" means products comprised of marijuana or concentrated marijuana and other ingredients that are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

14. "Marijuana paraphernalia" means any equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repacking, storing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

15. "Marijuana testing facility" means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.

16. "Process" means to harvest, dry, cure, trim, and separate parts of the marijuana plant by manual or mechanical means, such as sieving or ice water separation, but not by chemical extraction or chemical synthesis.

17. "Public place" means an area to which the public is invited or in which the public is permitted regardless of age. "Public place" does not include a retail marijuana store.

18. "Retail marijuana store" means an entity licensed to purchase marijuana form marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities and retail marijuana stores, and to sell marijuana and marijuana products to consumers.

19. "Unreasonably impracticable" means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

Sec. 4. *1. Sections 1 to 18 do not permit any person to engage in and do not prevent the imposition of any civil, criminal, or other penalty for:*

(a) Driving, operating, or being in actual physical control of a vehicle, aircraft, or vessel under power or sail while under the influence of marijuana or while impaired by marijuana;

(b) Knowingly delivering, giving, selling, administering, or offering to sell, administer, give, or deliver marijuana to a person under 21 years of age, unless:

(1) The recipient is permitted to possess marijuana pursuant to chapter 453A of NRS; or

(2) The person demanded and was shown bona fide documentary evidence of the majority and identity of the recipient issued by a federal, state, county, or municipal government, or subdivision or agency thereof;

(c) Possession or use of marijuana or marijuana paraphernalia on the grounds of, or within, any facility or institution under the jurisdiction of the Nevada Department of Corrections;

(d) Possession or use of marijuana on the grounds of, or within, a school providing instruction in preschool, kindergarten, or any grades 1 through 12; or

(e) Undertaking any task under the influence of marijuana that constitutes negligence or professional malpractice.

2. Sections 1 to 18 do not prohibit:

(a) A public or private employer from maintaining, enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under sections 1 to 18, inclusive, of this act;

(b) A state or local government agency that occupies, owns, or controls a building from prohibiting or otherwise restricting the consumption, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana in that building;

(c) A person who occupies, owns, or controls a privately owned property from prohibiting or otherwise restricting the smoking, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana on that property; or

(d) A locality from adopting and enforcing local marijuana control measures pertaining to zoning and land use for marijuana establishments.

3. Nothing in the provisions of sections 1 to 18, inclusive, of this act shall be construed as in any manner affecting the provisions of chapter 453A of NRS relating to the medical use of marijuana.

Sec. 5. *1. Not later than 12 months after the effective date of this act, the Department shall adopt all regulations necessary or convenient to carry out the provisions of sections 1 to 18, inclusive, of this act. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:*

(a) Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;

(b) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;

(c) Requirements for the security of marijuana establishments;

(d) Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;

(e) Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;

(f) Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;

(g) Requirements for record keeping by marijuana establishments;

(h) Reasonable restrictions on signage, marketing, display, and advertising;

(i) Procedures for the collection of taxes, fees, and penalties imposed by sections 1 to 18, inclusive, of this act;

(j) Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location;

(k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and marijuana establishments at the same location;

(l) Procedures to establish the fair market value at wholesale of marijuana; and

(m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any violation of the provisions of section 13 of this act.

2. The Department shall approve or deny applications for licenses pursuant to section 9 of this act.

3. The Department may by motion or on complaint, after investigation, notice of the specific violation, and an opportunity for a hearing, pursuant to the provisions of chapter 233B of NRS, suspend, revoke, or fine a licensee for the violation of sections 1 to 18, inclusive, of this act or for a violation of a regulation adopted by the Department pursuant to this section.

4. The Department may immediately suspend the license of any marijuana establishment if the marijuana establishment knowingly sells, delivers, or otherwise transfers marijuana in violation of sections 1 to 18, inclusive, of this act, or knowingly purchases marijuana from any person not licensed pursuant to sections 1 to 18, inclusive, of this act or to chapter 453A of NRS. The Department must provide an opportunity for a hearing pursuant to the provisions of NRS 233B.121 within a reasonable time from a suspension pursuant to this subsection.

5. To ensure that individual privacy is protected:

(a) The Department shall not require a consumer to provide a retail marijuana store with identifying information other than government-issued identification to determine the consumer's age; and

(b) A retail marijuana store must not be required to acquire and record personal information about consumers other than information typically acquired in a financial transaction conducted at a retail liquor store.

6. The Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.

7. The Department shall inspect marijuana establishments as necessary to enforce sections 1 to 18, inclusive, of this act or the regulations adopted pursuant to this section.

Sec. 6. *Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, except as otherwise provided in sections 1 to 18, inclusive, of this act, it is lawful, in this State, and must not be used as the basis for prosecution or penalty by this State or a political subdivision of this State, and must not, in this State, be a basis for seizure or forfeiture of assets for persons 21 years of age or older to:*

1. Possess, use, consume, purchase, obtain, process, or transport marijuana paraphernalia, one ounce or less of marijuana other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana;

2. Possess, cultivate, process, or transport not more than six marijuana plants for personal use and possess the marijuana produced by the plants on the premises where the plants were grown, provided that:

(a) Cultivation takes place within a closet, room, greenhouse, or other enclosed area that is equipped with a lock or other security device that allows access only to persons authorized to access the area; and

(b) No more than 12 plants are possessed, cultivated, or processed at a single residence, or upon the grounds of that residence, at one time;

3. Give or otherwise deliver one ounce or less of marijuana, other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana without remuneration to a person provided that the transaction is not advertised or promoted to the public; or

4. Assist another person who is 21 years of age or older in any of the acts described in this section.

Sec. 7. *Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, it is not unlawful and shall not be an offense or be a basis for seizure or forfeiture of assets for persons 21 years of age or older to manufacture, possess, use, transport, or purchase marijuana paraphernalia, or to distribute or sell marijuana paraphernalia to a person who is 21 years of age or older.*

Sec. 8. *Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, except as otherwise provided in sections 1 to 18, inclusive, of this act, or the regulations adopted pursuant to section 5 of this act, it is lawful and must not, in this State, be used as the basis for prosecution or penalty by this State or a political subdivision of this State, and must not, in this State, be a basis for seizure or forfeiture of assets for persons 21 years of age or older to:*

1. Possess marijuana and marijuana products, purchase marijuana from a marijuana cultivation facility, purchase marijuana and marijuana products from a marijuana product manufacturing facility, return marijuana or marijuana products to a facility from which they were purchased, transport marijuana and marijuana products to or from a marijuana testing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, or sell marijuana and marijuana products to consumers, if the person conducting the activities described in this subsection has a current, valid license to operate a retail marijuana store or is acting in the person's capacity as an agent of a retail marijuana store.

2. Cultivate, harvest, process, package, or possess marijuana, sell marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store, transport marijuana to or from a marijuana cultivation facility, a marijuana product manufacturing facility, or a marijuana testing facility, use the services of a marijuana distributor to transport marijuana to or from marijuana establishments, or purchase marijuana from a marijuana cultivation facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana cultivation facility or is acting in his or her capacity as an agent of a marijuana cultivation facility.

3. Package, process, manufacture, or possess marijuana and marijuana products, transport marijuana and marijuana products to or from a marijuana testing facility, a marijuana cultivation facility, or a marijuana product manufacturing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, sell marijuana and marijuana products to a retail marijuana store or a marijuana product manufacturing facility, purchase marijuana from a marijuana cultivation facility, or purchase marijuana and marijuana products from a marijuana product manufacturing facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana product manufacturing facility or is acting in his or her capacity as an agent of a marijuana product manufacturing facility.

4. Possess marijuana and marijuana products and transfer and transport marijuana and marijuana products between marijuana establishments, if the person transporting the

marijuana and marijuana products has a current, valid license to operate as a marijuana distributor or is acting in his or her capacity as an agent of a marijuana distributor.

5. Possess, process, repackage, transport, or test marijuana and marijuana products if the person has a current, valid license to operate a marijuana testing facility or is acting in his or her capacity as an agent of a marijuana testing facility.

6. Lease or otherwise allow property owned, occupied, or controlled by any person, corporation, or other entity to be used for any of the activities conducted lawfully in accordance with this section.

Sec. 9. *It is the public policy of the People of the State of Nevada that contracts related to the operation of marijuana establishments under sections 1 to 18, inclusive, of this act should be enforceable, and no contract entered into by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, or by those who allow property to be used by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, shall be deemed unenforceable on the basis that the actions or conduct permitted pursuant to the license are prohibited by federal law.*

Sec. 10. *1. No later than 12 months after the effective date of this act, the Department shall begin receiving applications for marijuana establishments.*

2. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall only accept applications for licenses for retail marijuana stores, marijuana product manufacturing facilities, and marijuana cultivation facilities pursuant to sections 1 to 18, inclusive, of this act, from persons holding a medical marijuana establishment registration certificate pursuant to chapter 453A of NRS.

3. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall issue licenses for marijuana distributors pursuant to sections 1 to 18, inclusive, of this act, only to persons holding a wholesale dealer license pursuant to chapter 369 of NRS, unless the Department determines that an insufficient number of marijuana distributors will result from this limitation.

4. Upon receipt of a complete marijuana establishment license application, the Department shall, within 90 days:

(a) Issue the appropriate license if the license application is approved; or

(b) Send a notice of rejection setting forth the reasons why the Department did not approve the license application.

5. The Department shall approve a license application if:

(a) The prospective marijuana establishment has submitted an application in compliance with regulations adopted by the Department and the application fee required pursuant to section 12;

(b) The physical address where the proposed marijuana establishment will operate is owned by the applicant or the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property;

(c) The property is not located within:

(1) 1,000 feet of a public or private school that provides formal education traditionally associated with preschool or kindergarten through grade 12 and that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department; or

(2) 300 feet of a community facility that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department;

(d) The proposed marijuana establishment is a proposed retail marijuana store and there are not more than:

(1) 80 licenses already issued in a county with a population greater than 700,000;

(2) 20 licenses already issued in a county with a population that is less than 700,000 but more than 100,000;

(3) 4 licenses already issued in a county with a population that is less than 100,000 but more than 55,000;

(4) 2 licenses already issued in a county with a population that is less than 55,000;

(5) Upon request of a county government, the Department may issue retail marijuana store licenses in that county in addition to the number otherwise allowed pursuant to this paragraph;

(e) The locality in which the proposed marijuana establishment will be located does not affirm to the Department that the proposed marijuana establishment will be in violation of zoning or land use rules adopted by the locality; and

(f) The persons who are proposed to be owners, officers, or board members of the proposed marijuana establishment:

(1) Have not been convicted of an excluded felony offense; and

(2) Have not served as an owner, officer, or board member for a medical marijuana establishment or a marijuana establishment that has had its registration certificate or license revoked.

6. Competing applications. When competing applications are submitted for a proposed retail marijuana store within a single county, the Department shall sue an impartial and numerically scored competitive bidding process to determine which application or applications among those competing will be approved.

Sec. 11. *1. All licenses expire one year after the date of issue.*

2. The department shall issue a renewal license within 10 days of receipt of the prescribed renewal application and renewal fee from a marijuana establishment if its license is not under suspension or has not been revoked.

Sec. 12. *1. The Department shall require each applicant for a marijuana establishment license to pay a one-time application fee of $5,000.*

2. The Department may require payment of an annual licensing fee not to exceed:

For the initial issuance of a license for a retail marijuana store $20,000
For a renewal license for a retail marijuana store $6,600
For the initial issuance of a license for a marijuana cultivation facility $30,000
For a renewal license for a marijuana cultivation facility $10,000
For the initial issuance of a license for a marijuana product manufacturing facility $10,000
For a renewal license for a marijuana product manufacturing facility $3,300
For the initial issuance of a license for a marijuana distributor $15,000
For a renewal license for a marijuana distributor $5,000
For the initial issuance of a license for a marijuana testing facility $15,000
For a renewal license for a marijuana testing facility $5,000

Sec. 13. *In addition to requirements established by rule pursuant to section 5 of this act:*

1. Marijuana establishments shall:

(a) Secure every entrance to the establishment so that access to areas containing marijuana is restricted to persons authorized to possess marijuana;

(b) Secure the inventory and equipment of the marijuana establishment during and after operating hours to deter and prevent theft of marijuana;

(c) Determine the criminal history of any person before the person works or volunteers at the marijuana establishment and prevent any person who has been convicted of an excluded felony offense or who is not 21 years of age or older from working or volunteering for the marijuana establishment.

2. All cultivation, processing, and manufacture of marijuana must take place at a physical address approved by the Department and within an area that is enclosed and locked in a manner that restricts access only to persons authorized to access the area. The area may be uncovered only if it is enclosed with security fencing that is designed to prevent unauthorized entry and that is at least 8 feet high.

3. All cultivation, processing, and manufacture of marijuana must not be visible from a public place by normal unaided vision.

4. All cultivation, processing, and manufacture of marijuana must take place on property in the marijuana establishment's lawful possession or with the consent of the person in lawful physical possession of the property.

5. A marijuana establishment is subject to reasonable inspection by the Department, and a person who holds a marijuana establishment license must make himself or herself, or an agent thereof, available and present for any inspection required by the Department. The Department shall make reasonable accommodations so that ordinary business is not interrupted and safety and security procedures are not compromised by the inspection.

Sec. 14. *1. Restrictions on personal cultivation.*

(a) Except as otherwise provided in chapter 453A of NRS, any person who:

(1) Cultivates marijuana within 25 miles of a retail marijuana store licensed pursuant to sections 1 to 18, inclusive, of this act, unless the person is a marijuana cultivation facility or a person acting in his or her capacity as an agent of a marijuana cultivation facility;

(2) Cultivates marijuana plants where they are visible from a public place by normal unaided vision; or

(3) Cultivates marijuana on property not in the cultivator's lawful possession or without the consent of the person in lawful physical possession of the property;

(b) Is guilty of:

(1) For a first violation, a misdemeanor punished by a fine of not more than $600.

(2) For a second violation, a misdemeanor punished by a fine of not more than $1,000.

(3) For a third violation, a gross misdemeanor.

(4) For a fourth or subsequent violation, a category E felony.

2. A person who smokes or otherwise consumes marijuana in a public place, in a retail marijuana store, or in a moving vehicle is guilty of a misdemeanor punished by a fine of not more than $600.

3. A person under 21 years of age who falsely represents himself or herself to be 21 years of age or older to obtain marijuana is guilty of a misdemeanor.

4. A person under 21 years of age who knowingly enters, loiters, or remains on the premises of a marijuana establishment shall be punished by a fine of not more than $500 unless the person is authorized to possess marijuana pursuant to chapter 453A of NRS and the marijuana establishment is a dual licensee.

5. A person who manufactures marijuana by chemical extraction or chemical synthesis, unless done pursuant to a marijuana product manufacturing license issued by the Department or authorized by chapter 453A of NRS, is guilty of a category E felony.

6. A person who knowingly gives marijuana to any person under 21 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 21 years of age is guilty of a misdemeanor.

7. A person who knowingly gives marijuana to any person under 18 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 18 years of age is guilty of a gross misdemeanor.

8. Notwithstanding the provisions of sections 1 to 18, inclusive, of this act, after the effective date of this act, the legislature may amend provisions of this act to provide for the conditions in which a locality may permit consumption of marijuana in a retail marijuana store.

Sec. 15. *An excise tax is hereby imposed and must be collected by the State respecting wholesale sales of marijuana in this State by a marijuana cultivation facility at a rate of 15 percent of the fair market value at wholesale of the marijuana. The tax imposed pursuant to this subsection:*

1. Is the obligation of the marijuana cultivation facility; and

2. Is separate from and in addition to any general state and local sales and use taxes that apply to retail sales of tangible personal property.

Sec. 16. *Any tax revenues, fees, or penalties collected pursuant to sections 1 to 18, inclusive, of this act, first must be expended to pay the costs of the Department and of each*

locality in carrying out sections 1 to 8, inclusive, of this act and the regulations adopted pursuant thereto. The Department shall remit any remaining money to the State Treasurer to be deposited to the credit of the State Distributive School Account in the State General Fund.

Sec. 17. ***If any provision of this act, or the application thereof to any person, thing, or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.***

Sec. 18. This act shall become effective on October 1, 2015, if approved by the legislature, or on January 1, 2017, if approved by the voters.

STATE QUESTION NO. 3

Amendment to the *Nevada Constitution*

Shall Article 1 of the *Nevada Constitution* be amended to require the Legislature to provide by law for the establishment of an open, competitive retail electric energy market that prohibits the granting of monopolies and exclusive franchises for the generation of electricity?

Yes ☐ No ☐

EXPLANATION & DIGEST

EXPLANATION—This ballot measure proposes to amend the *Nevada Constitution* to require the Legislature to provide by law for an open, competitive retail electric energy market by July 1, 2023. The law passed by the legislature must include, but is not limited to, provisions that reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the granting of monopolies and exclusive franchises for the generation of electricity. The law would not have to provide for the deregulation of the transmission or distribution of electricity.

Approval of this ballot measure would add a new section to the *Nevada Constitution* establishing that every person, business, association of persons or businesses, state agency, political subdivision of the State of Nevada, or any other entity in Nevada has the right to choose the provider of its electric utility service, including but not limited to, selecting providers from a competitive retail electric market, or by producing electricity for themselves or in association with others, and shall not be forced to purchase energy from one provider. The proposed amendment does not create an open and competitive retail electric market, but rather requires the Legislature to provide by law for such a market by July 1, 2023. The law passed by the Legislature cannot limit a person's or entity's right to sell, trade, or otherwise dispose of electricity. Pursuant to Article 19, Section 2, of the *Nevada Constitution*, approval of this question is required at two consecutive general elections before taking effect.

A "Yes" vote would amend Article 1 of the *Nevada Constitution* so that the Legislature would be required to pass a law by July 1, 2023, that creates an open and competitive retail electric market and that includes provisions to reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the granting of monopolies and exclusive franchises for the generation of electricity.

A "No" vote would retain the provisions of Article 1 of the *Nevada Constitution* in their current form. These current provisions do not require the Legislature to pass a law that creates an open and competitive retail electric market and that includes provisions to reduce

costs to customers, protect against service disconnections and unfair practices, and prohibit the granting of monopolies and exclusive franchises for the generation of electricity.

DIGEST—Article 1 of the *Nevada Constitution* contains various rights granted to the people of Nevada. Approval of this ballot measure would add a new section to Article 1 of the *Nevada Constitution* that would require the Legislature to provide by law, no later than July 1, 2023, for an open, competitive retail electric energy market with protections that entitle customers to safe, reliable, and competitively priced electricity. The law passed by the legislature must include, but is not limited to, provisions that reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the granting of monopolies and exclusive franchises for the generation of electricity. This constitutional amendment would have an impact on public revenue; however, the amount of the impact cannot be determined.

Existing law, found in Title 58 of the *Nevada Revised Statutes*, generally authorizes a single utility to provide electric service to customers in each electric service territory in the state. This means that most Nevadans are required to purchase electricity from a single provider. Utility providers are regulated by the Nevada Public Utilities Commission (PUC), which is charged with providing for the safe, economic, efficient, prudent, and reliable operation and service of public utilities, as well as balancing the interests of customers and shareholders of public utilities by providing public utilities with the opportunity to earn a fair return on their investments while providing customers with just and reasonable rates.

ARGUMENT FOR PASSAGE

The Energy Choice Initiative

Vote YES on Question 3, the Energy Choice Initiative.

Nevada has some of the highest electricity rates in the West.[1] In addition, as ratepayers, we are limited in the types of renewable energy we can purchase because most of us are forced to buy energy from a monopoly.[2] Many businesses, including those who would relocate here and create new jobs, want more renewable energy.[3]

The problems with the current energy policy are:

- The electricity rates we pay are largely dictated by the Public Utilities Commission, not the free market.[4] And those rates provide for a guaranteed return (profit) for the utility company.[5]
- There is a legal monopoly in most of Nevada's electricity market and the rates charged to customers are not subject to pressure from competition.[6]
- Without an open market, it is difficult for Nevadans to take advantage of new technologies in energy generation.[7]

- Nevada residents and businesses often cannot choose the specific type of electricity they want—that fueled by renewable resources.[8]

Question 3 is a constitutional amendment that would create a right for Nevadans to purchase energy from an open electricity market. Residents and businesses will be allowed to purchase electricity from a provider of their choice.

A YES vote on Question 3 means you support:

- Eliminating the monopoly on retail power sales.[9]
- Creating a new marketplace where customers and energy providers come together.[10]
- Preserving the utility, whether it's NV Energy or another utility, as the operator of the electric distribution grid.[11]
- Protecting consumers by requiring the Nevada Legislature to enact laws that entitle Nevadans to safe, reliable, and competitively priced electricity that protects against service disconnections and unfair practices.[12]
- Paying rates for electricity that are set by an open and competitive market, not an appointed government agency.[13]
- Allowing energy providers to offer electricity from any source – including renewable sources – without needing the approval of the Commission.[14]
- Keeping Nevada's renewable energy portfolio standard in place, along with Nevada's other renewable policies.[15]
- Allowing the Commission to continue to regulate Nevada's electricity market, but instead of regulating a single provider, they regulate the competitive market.[16]

Many people believe that competition in the electricity market drives prices down and provides more resource options for residents and businesses.[17] To date, 24 states have passed legislation or regulatory orders that will allow some level of retail competition.[18]

It's time for Nevadans to have a choice.

Vote YES on Question 3.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Matt Griffin (Chair), Nevadans for Affordable, Clean Energy Choices; and Lucas Foletta, Nevadans for Affordable, Clean Energy Choices. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

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[1] *Assessment and Recommendations: Alignment of Nevada Economic Development Policy and Energy Policy*, pages 13-14, Nevada State Office of Energy and Governor's Office of Economic Development (2013), available at http://www.leg.state.nv.us/interim/77th2013/Committee/StatCom/Energy/Other/19-May-2014/5VBARTHOLETWhitePaper.PDF.

[2] NRS 704.330(6).

[3] *Las Vegas casinos seek to power their bright lights with renewable energy* (March 7, 2016), The Guardian, https://www.theguardian.com/environment/2016/mar/07/las-vegas-casinos-solar-power-nevada-energy; and *Companies Go Green on Their Own Steam* (March 8, 2016), The Wall Street Journal, http://www.wsj.com/articles/companies-go-green-on-their-own-steam-1457483035.
[4] *Things to know on a ballot measure to end NV Energy monopoly* (Apr. 25, 2016), Reno Gazette Journal, http://www.rgj.com/story/news/2016/04/23/things-know-ballot-measure-end-nv-energy-monopoly/83437680/.
[5] *Id.*; *Warren Buffet's Dicey Power Play* (June 10, 2016), Fortune, http://www.bloomberg.com/news/articles/2016-06-10/buffett-s-power-play-pits-las-vegas-casinos-against-energy-unit.
[6] NRS 704.330(6); *Things to know on a ballot measure to end NV Energy monopoly* (Apr. 25, 2016), Reno Gazette Journal, http://www.rgj.com/story/news/2016/04/23/things-know-ballot-measure-end-nv-energy-monopoly/83437680/.
[7] *Clean Power Startups Aim to Break Monopoly of U.S. Utility Giants* (Dec. 12, 2012), Inside Climate News, https://insideclimatenews.org/news/20121212/renewable-power-startups-georgia-solar-panterra-energy-gen110-distributed-generation-rooftop-solar-hurricane-sandy.
[8] *Nevada Switch data centers now 100% renewable-powered* (Jan. 7, 2016), Reno Gazette Journal, http://www.rgj.com/story/money/reno-rebirth/2016/01/06/switch-supernap-data-centers-100-percent-renewables-green-energy/78318378/.
[9] See Energy Choice Initiative.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Lowering Electricity Prices Through Deregulation*, Current Issues in Economics and Finance, The New York Federal Reserve, https://www.newyorkfed.org/medialibrary/media/research/current_issues/ci6-14.pdf; *Green Energy Guide*, Energy Savings, https://www.energysavings.com/green-energy-guide.html.
[18] *Energy Deregulation, Overview: What's Changing and Why,* Washington Post, http://www.washingtonpost.com/wp-adv/specialsales/energy/report/article10.html.

REBUTTAL TO ARGUMENT FOR PASSAGE

A Constitutional measure to deregulate energy markets in Nevada is unnecessary. No evidence exists that deregulation provides additional choice, advances renewable energy, or creates lower rates.

Nevada's average rates are 44% lower than California's, and 20% lower than the U.S. generally.[1] Deregulation hasn't produced lower prices for residents or businesses in states that have tried it.

Nevada's public policies are advancing renewable energy. Nevada's largest utility ranked 7th nationally for added solar last year.[2] Customers receive energy from 45 large-scale renewable projects capable of supplying 700,000-plus homes.[3] Projects are 100% competitively bid, so customers get the lowest cost. Deregulated markets have not been shown to support renewable energy growth.

Utilities plan 20 years ahead to be there for Nevadans in the long-term, providing safe, reliable service.[4] Deregulation takes away that safety net, exposing us to unpredictable energy markets.

Supporters of Question 3 say that 24 states allow for some level of deregulation. What they don't tell you is that Nevada is one of them. Implementing more deregulation would take years and cost Nevadans significant money. Nevada has set a clear path for stable energy prices and renewable energy development. Full deregulation would put Nevadans at risk and progress on hold.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee member: Bradley Schrager (Chair), private citizen. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

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[1] http://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_5_6_a Table 5.6.A. Average Price of Electricity to Ultimate Customers by End-Use Sector, by State, May 2016 and 2015 (Cents per kilowatt hour).
[2] http://www.solarelectricpower.org/discover-resources/solar-tools/2015-solar-power-rankings.aspx.
[3] https://www.nvenergy.com/brochures_arch/RenewablesBrochure.pdf.
[4] N.A.C. 704.9215.

ARGUMENT AGAINST PASSAGE

Deregulation of the energy market means a loss of control by Nevada's citizens. We allowed the airlines to be deregulated, and today air travel is a nightmare.[1] We allowed the banking system to be deregulated, and the housing and financial crisis followed.[2] It was deregulation of energy markets in California that allowed the Enron disaster.[3] In fact, Nevadans considered deregulating the energy market in the 1990s, but the rolling blackouts and power shortages of the Enron crisis taught us that deregulation was too risky.[4] We should not forget those lessons now, and this initiative should be defeated.

In state after state over the last three decades, proponents of deregulation across the country have promised that "energy choice" would mean lower costs, but the results have been ever-higher prices for energy, charged by private companies outside the control of state agencies.[5]

In deregulated New York, residential customers wound up paying energy costs 70% above the national average.[6] In Texas, retail consumers pay fifteen percent higher electricity bills after deregulation than before it.[7] And in Connecticut, customers of deregulated energy providers saw uncontrollable price jumps with little or no warning, increases the state was unable to stop or limit.[8] Even this initiative's proponents agree that Nevada will no longer be able to set or secure any certain price or rate structure, and therefore will not be able guard against the same thing happening here. Deregulation of the energy market was supposed to offer consumer

choice and better pricing and services, but it did not, and there is no way to guarantee it will provide any benefit at all to Nevadans.

Currently, Nevada's utility companies are regulated by the state, which approves or rejects any changes to rates and ensures that utilities cannot gouge Nevada customers.[9] Recent studies show that Nevada consumers enjoyed the second-lowest rates of energy price increase in the country, largely due to the prudent management of the market by public agencies.[10] By contrast, U.S. Department of Energy data shows that electricity prices have risen more steeply in states with energy deregulation programs similar to that proposed by this initiative than in those without.[11]

Nevada's energy is too important of a public resource to permit the unpredictable and uncontrollable cost increases that this market deregulation initiative would threaten. We should vote "No" on this very flawed ballot measure, and ensure Nevadans can maintain control over the state's energy market.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee member: Bradley Schrager (Chair), private citizen. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

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[1] Tom Sgouros, *The Disaster of Deregulation: Airlines*, RI Future, September 18, 2012, http://www.rifuture.org/the-disaster-of-deregulation-airlines.html.

[2] Sewell Chan, *Financial Crisis Was Avoidable, Inquiry Finds*, New York Times, January 25, 2011, http://www.nytimes.com/2011/01/26/business/economy/26inquiry.html?_r=0.

[3] *California Electricity Crisis,* wikipedia.com, https://en.wikipedia.org/wiki/California_electricity_crisis#cite_ref-22.

[4] Michelle Rindels, *Things to Know on Ballot Measure to End NV Energy Monopoly,* Las Vegas Sun, April 24, 2016, http://lasvegassun.com/news/2016/apr/24/things-to-know-on-a-ballot-measure-to-end-nv-energ/.

[5] Public Sector Consultants, *Electric Industry Deregulation: A Look at the Experience of Three States*, October 2013, http://www.pscinc.com/LinkClick.aspx?fileticket=IOIAyiNGrwI%3D&tabid=65.

[6] H. Carl McCall, New York State Comptroller, *Electric Deregulation in New York State*, February 2001, http://www.osc.state.ny.us/reports/other/dereg.pdf.

[7] Jordan Blum, *Texas Consumers Pay More In Deregulated Electricity Markets*, Houston Chronicle, June 8, 2016, http://www.houstonchronicle.com/business/energy/article/Texas-consumers-pay-more-in-deregulated-7972017.php.

[8] Jennifer Abel, *Deregulated Energy Providers: Are They a Good Deal: Customers of Ambit Energy Decry Unexpected Price Jumps,* Consumer Reports, April 24, 2014, https://www.consumeraffairs.com/news/deregulated-energy-providers-are-they-a-good-deal-042414.html.

[9] Michelle Rindels, *Things to Know on Ballot Measure to End NV Energy Monopoly,* Las Vegas Sun, April 24, 2016, http://lasvegassun.com/news/2016/apr/24/things-to-know-on-a-ballot-measure-to-end-nv-energ/.

[10] Texas Coalition for Affordable Power, *Electricity Prices in Texas,* August 2015, p.8, *citing* United States Energy Information Administration Electricity Data, http://tcaptx.com/wp-content/uploads/2015/08/TCP-1035-ElectricityPricesinTX-Snapshot-A-Final.pdf.

[11] David Johnston, "Competitively Priced Electricity Costs More, Studies Show," The New York Times, November 6, 2007. http://www.nytimes.com/2007/11/06/business/06electric.html.

REBUTTAL TO ARGUMENT AGAINST PASSAGE

In breaking up Bell's telecommunications monopoly, we unleashed advances in technology that revolutionized how we live.[1] New companies entered the market and began competing for business by offering better products and services — and now we have cell phones with internet access, apps, and cameras.[2] Monopolies have no incentive to lower prices, become more efficient, and offer more services.[3] Under Question 3, energy markets will be opened like telecommunications, trucking, railroads, and natural gas.[4]

The opponents are wrong. Under Question 3, the safety, reliability, and quality of Nevada's energy will continue to be regulated by the Legislature, the PUC, and the federal government.[5] Opponents try to scare people with Enron, without telling you that there are now effective and proven laws against market manipulation.[6]

Energy choice has been a success in other states. New Yorkers have seen electricity prices drop 34%[7]; in Texas it has caused rates to drop below the national average[8]; and in Connecticut, there are more than 24 suppliers offering over 200 different energy choices, some below standard rates by more than 30%.[9] 22% of those offers are for 100% renewable energy.[10] It's time for us to have choice in energy suppliers – vote yes on Question 3.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Matt Griffin (Chair), Nevadans for Affordable, Clean Energy Choices; and Lucas Foletta, Nevadans for Affordable, Clean Energy Choices. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

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[1] *What We Can Learn From the History of Deregulation: US Telecommunications*, https://www.bounceenergy.com/articles/texas-electricity/history-of-deregulation-telecommunication.
[2] *Id*.
[3] *Pure Monopoly: Economic Effects,* http://thismatter.com/economics/pure-monopoly-economic-effects.htm.
[4] *Energy Deregulation, Overview: What's Changing and Why,* Washington Post, http://www.washingtonpost.com/wp-adv/specialsales/energy/report/article10.html.
[5] *See* Energy Choice Initiative.
[6] Prohibition of Energy Market Manipulation, http://www.ferc.gov/enforcement/market-manipulation.asp.
[7] NY Electricity Prices Have Fallen 34% under Deregulation, June 17, 2015, http://www.energymanagertoday.com/ny-electricity-prices-have-fallen-34-under-deregulation-0112925/.
[8] Electric deregulation cost Texas customers money, but they're beating the nation now, August 12, 2015, http://www.houstonchronicle.com/business/energy/article/Electric-deregulation-cost-Texas-customers-money-6439943.php.
[9] Connecticut Energy Shopping Site Shows Opportunities for Savings, April 27, 2016, http://www.resausa.org/news-events/connecticut-energy-shopping-site-shows-opportunities-savings.
[10] *Id*.

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

OVERVIEW

Question 3 proposes to amend Article 1 of the *Nevada Constitution* by adding a new section requiring the Nevada Legislature to provide by law for an open, competitive retail electric energy market no later than July 1, 2023. To ensure that protections are established that entitle customers to safe, reliable, and competitively priced electricity, the law must also include, but is not limited to, provisions that reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the grant of monopolies and exclusive franchises for the generation of electricity.

FINANCIAL IMPACT OF QUESTION 3

If approved by the voters at the 2016 and 2018 General Elections, Question 3 will require the Legislature and Governor to approve legislation creating an open, competitive retail electric energy market between the effective date (November 27, 2018) and July 1, 2023. The Fiscal Analysis Division cannot predict when the Legislature and Governor will enact legislation that complies with the Initiative, nor can it predict how the constitutional provisions proposed within the Initiative will be implemented or which state or local government agencies will be tasked with implementing and administering any laws relating to an open, competitive retail electric energy market. Thus, the financial impact relating to the administration of the Initiative by potentially affected state and local government entities cannot be determined with any reasonable degree of certainty.

Under current law, state and local governments, including school districts, may receive revenue from taxes and fees imposed upon certain public utilities operating within the jurisdiction of that government entity, based on the gross revenue or net profits received by the public utility within that jurisdiction. The Fiscal Analysis Division cannot determine what effect, if any, the open, competitive retail electric energy market created by the Legislature and Governor may have on the consumption of electricity in Nevada, the price of electricity that is sold by these public utilities, or the gross revenue or net profits received by these public utilities. Thus, the potential effect, if any, upon revenue received by those government entities cannot be determined with any reasonable degree of certainty.

Additionally, because the Fiscal Analysis Division cannot predict whether enactment of Question 3 will result in any specific changes in the price of electricity or the consumption of electricity by state and local government entities, the potential expenditure effects on those government entities cannot be determined with any reasonable degree of certainty.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – August 12, 2016

THE ENERGY CHOICE INITIATIVE

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

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 19. Article 1 of the Nevada Constitution is hereby amended by adding thereto a new section to read as follows:

1. The People of the State of Nevada declare that it is the policy of this State that electricity markets be open and competitive so that all electricity customers are afforded meaningful choices among different providers, and that economic and regulatory burdens be minimized in order to promote competition and choices in the electric energy market. This Act shall be liberally construed to achieve this purpose.

2. Effective upon the dates set forth in subsection 3, every person, business, association of persons or businesses, state agency, political subdivision of the State of Nevada, or any other entity in Nevada has the right to choose the provider of its electric utility service, including, but not limited to, selecting providers from a competitive retail electric market, or by producing electricity for themselves or in association with others, and shall not be forced to purchase energy from one provider. Nothing herein shall be construed as limiting such persons' or entities' rights to sell, trade or otherwise dispose of electricity.

3. (a) Not later than July 1, 2023, the Legislature shall provide by law for provisions consistent with this Act to establish an open, competitive retail electric energy market, to ensure that protections are established that entitle customers to safe, reliable, and competitively priced electricity, including, but not limited to, provisions that reduce costs to customers, protect against service disconnections and unfair practices, and prohibit the grant of monopolies and exclusive franchises for the generation of electricity. The Legislature need not provide for the deregulation of transmission or distribution of electricity in order to establish a competitive market consistent with this Act.

(b) Upon enactment of any law by the Legislature pursuant to this Act before July 1, 2023, and not later than that date, any laws, regulations, regulatory orders or other provisions which conflict with this Act will be void. However, the Legislature may enact legislation consistent with this act that provides for an open electric energy market in part or in whole before July 1, 2023.

(c) Nothing herein shall be construed to invalidate Nevada's public policies on renewable energy, energy efficiency and environmental protection or limit the Legislature's ability to impose such policies on participants in a competitive electricity market.

4. Should any part of this Act be declared invalid, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the remaining provisions or application of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable. This subsection shall be construed broadly to preserve and effectuate the declared purpose of this Act.

STATE QUESTION NO. 4

Amendment to the *Nevada Constitution*

Shall Article 10 of the *Nevada Constitution* be amended to require the Legislature to provide by law for the exemption of durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for use by a licensed health care provider from any tax upon the sale, storage, use, or consumption of tangible personal property?

Yes ☐ No ☐

EXPLANATION & DIGEST

EXPLANATION—This ballot measure proposes to amend the *Nevada Constitution* to require the Legislature to pass a law that allows for the exemption of durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for human use by a licensed health care provider acting within his or her scope of practice from any tax on the sale, storage, use, or consumption of tangible personal property. The proposed amendment does not create an exemption of durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment from these taxes, but rather requires the Legislature to establish by law for such an exemption. Pursuant to Article 19, Section 2, of the *Nevada Constitution*, approval of this measure is required at two consecutive general elections before taking effect.

A "Yes" vote would amend Article 10 of the *Nevada Constitution* so that the Legislature would be required to pass a law exempting durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for human use by a licensed health care provider from taxation related to the sale, storage, use, or consumption of the equipment.

A "No" vote would retain the provisions of Article 10 of the *Nevada Constitution* in their current form. These provisions do not require the Legislature to pass a law exempting durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for human use by a licensed health care provider from taxation related to the sale, storage, use, or consumption of the equipment.

DIGEST—Article 10 of the *Nevada Constitution* contains provisions relating to taxation. Approval of this question would add a new section to Article 10 of the *Nevada Constitution* to require the Legislature to pass a law that allows for the exemption of durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for human use by a licensed health care provider acting within his or her scope of practice from any tax on the sale, storage, use, or consumption of tangible personal property. This tax exemption would decrease public revenue as this equipment is currently subject to sales and use tax.

ARGUMENT FOR PASSAGE

Medical Patient Tax Relief Act

A YES vote on Question 4 helps sick, injured, and dying patients and their families. It stops the Department of Taxation from imposing unnecessary sales taxes on medical equipment prescribed by physicians, such as wheelchairs, infant apnea monitors, and oxygen delivery devices. It will bring Nevada in line with the vast majority of states which do not tax this type of equipment for home use.[1]

A YES vote would relieve the sales tax burden on medical equipment used by patients who require oxygen devices to live, such as those with cancer, asthma, and cardiac disease; babies who need protection from Sudden Infant Death Syndrome; children with cystic fibrosis on home ventilators; and hospice patients in their last weeks of life. Current Nevada law already exempts medicine and prosthetics because we have recognized how vital this relief is for our most vulnerable populations.[2] Question 4 simply seeks to extend this protection to critical medical equipment.

For insured Nevadans, this tax is contributing to the increasing copays, deductibles, and premium costs that are crippling family finances across the state. For uninsured Nevadans the impact is even worse: Sales tax on medical equipment can reach thousands of dollars for severely disabled patients, and it forces people to forego essential equipment prescribed by their doctors because they simply cannot afford to pay.

Fortunately, while this would have a significant impact on the patients and their families, there would be *very little impact to state tax revenue*. The Department of Taxation, itself, has estimated that a tax exemption on this medical equipment represents approximately 0.025% of the annual state budget.[3]

Almost all people will need some sort of medical equipment in their lifetimes. Voting YES on Question 4 is the compassionate, and eventually prudent, thing to do. Join over 100,000 Nevadans who signed the petition calling for the end to this tax. It will help hundreds of families today and may help yours tomorrow.

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Josh Hicks (Chair), Alliance to Stop Taxes on the Sick and Dying PAC; Doug Bennett, Alliance to Stop Taxes on the Sick and Dying PAC; and Dr. Joseph Kenneth Romeo, private citizen. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact or impact on the public health, safety, and welfare. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

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[1] https://www.leg.state.nv.us/App/NELIS/REL/78th2015/ExhibitDocument/OpenExhibitDocument?exhibitId=12642&fileDownloadName=Streamlined%20Sales%20Tax%20Comparison.pdf.

[2] NRS 372.283.

[3] This percentage was reached by calculating the annual fiscal impact of Senate Bill 334 (2015) – $931,714 – as a percentage of the State's fiscal year 2017 budget revenues of approximately $3,700,000,000. See http://www.leg.state.nv.us/Session/78th2015/FiscalNotes/5266.pdf and http://openbudget.nv.gov/OpenGov/ViewBudgetSummary.aep?amountView=Year2&budgetVersionId=13&version=Leg&type=Rev&view=ObjectType.

REBUTTAL TO ARGUMENT FOR PASSAGE

The proponents of Question 4 argue that sales tax on durable medical equipment is "unnecessary." Sales tax funds services such as schools, police, and fire departments, to name a few. Are these services "unnecessary?" If that is true, why are voters in Washoe County being asked to increase their sales tax rate from 7.725% to 8.265% for additional school funding?[1]

The proponents say Question 4, "simply seeks to extend this protection to critical medical equipment." We do not know what this truly means because the language is vaguely worded, and the definitions and exemptions are left to be determined by the Legislature.

The proponents say, "The Department of Taxation, itself, has estimated that a tax exemption on this medical equipment represents approximately 0.025% of the annual state budget." This begs the question, on what "medical equipment?" Until the relevant Legislative session, how is it possible to estimate the impact of this unknown quantity?

The argument in support states, "Almost all people will need some sort of medical equipment." What does that have to do with the question before us? Again, you need to question what medical equipment are we talking about and what is the cost to everyday taxpayers?

The above rebuttal was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee member: Ann O'Connell (Chair), private citizen. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact or impact on the public health, safety, and welfare. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

[1] *Sales tax increase on ballot this fall in Washoe County,* News 4 on Your Side, February 15, 2016, http://mynews4.com/news/local/sales-tax-increase-on-ballot-this-fall-in-washoe-county.

ARGUMENT AGAINST PASSAGE

VOTE NO ON QUESTION 4!

Basic budget principles state that when expenses exceed revenues, debt is created. When the law requires state or local government agencies such as schools to be funded, the law expects a set amount of revenue to fund that agency. When a tax exemption reduces the amount of

revenue expected, the agency has no choice but to request a replacement of the lost funding. To do that the agency must depend on the Governor and the Legislature to include the lost funding in the budget.

Sales taxes pay for a myriad of services Nevadans rely on including schools, police, fire departments, libraries, and parks, to name a few.

Question 4 seeks to exempt durable medical equipment from sales tax. On the surface, this exemption seems like a good thing, providing tax relief to those in need. However, this exemption is really a wolf in sheep's clothing:

1. It is vaguely worded without clear definitions of what specific devices will be exempt and who will benefit, leaving such determination to the Legislature;
2. It decreases an unknown amount of revenue from an already strained budget, creating the need for higher taxes in the future; and
3. It uses the law to provide special privileges to a special-interest group at the expense of everyday taxpayers.

Tax exemptions have consequences for the taxpayer; the same consequences as tax subsidies, tax breaks, tax abatements, and tax incentives. The Nevada Department of Taxation's *2013-2014 Tax Expenditure Report* states that Nevada has 243 such tax expenditures that cost taxpayers over $3.7 BILLION a biennium.[1]

Who is footing the bill for all those exemptions? You, the local taxpayer.

You should be mindful of the most recent government "giveaways," such as the approval of $1.3 BILLION in subsidies to Tesla[2], $215 MILLION in tax incentives to Faraday[3], and $7.8 Million in tax abatements to six different companies relocating to Nevada[4].

Ask yourself, is Question 4 just another "giveaway," and is there any follow-up to see if promises made for these "giveaways" are promises kept?

The question also needs to be asked, isn't this just another burden on Nevada taxpayers? If it isn't, why in 2003 and again in 2015 did our governors go after a BILLION-plus dollars in tax increases[5]?

When the wolf comes huffing and puffing at your door, reject it. Vote NO on Question 4!

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee member: Ann O'Connell (Chair), private citizen. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact or impact on the public health, safety, and welfare. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

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[1] Nevada Department of Taxation, *2013-2014 Tax Expenditure Report,* http://tax.nv.gov/uploadedFiles/taxnvgov/Content/TaxLibrary/Tax_Expenditure_Report_2013-2014.pdf.
[2] *Editorial: Tesla in the News,* Las Vegas Review Journal, July 26, 2016, http://www.reviewjournal.com/opinion/editorials/editorial-tesla-the-news.
[3] *Faraday Future gets OK to begin grading at North Las Vegas site,* Las Vegas Review Journal, July 28, 2016, http://www.reviewjournal.com/business/economic-development/faraday-future-gets-ok-begin-grading-north-las-vegas-site.
[4] *More tech companies moving to Nevada,* Las Vegas Review Journal, July 25, 2016, *http://www.reviewjournal.com/business/more-tech-companies-moving-nevada.*
[5] Assembly Bill 4, Senate Bill 2, and Senate Bill 8: 20th (2003) Special Session; Senate Bill 483: 78th (2015) Session.

REBUTTAL TO ARGUMENT AGAINST PASSAGE

This is taxation at its worst, targeting the most vulnerable Nevadans. These aren't wealthy people paying sales tax for new cars. These are sick people required to pay taxes on the machines that keep them alive.

The real "wolf in sheep's clothing" is the pro-tax argument, which is misleading in three ways:

1. The proposal is not vague. Durable medical equipment is already defined in Nevada law.
2. The budget won't be hurt. The cities of Las Vegas and Reno both assessed the proposal, concluding that the impact will be immaterial. And, comparing this to the billions in tax breaks for Tesla is irresponsible – the annual impact of Question 4 will be less than one one-thousandth of that amount.
3. Lastly, this only benefits "special-interest groups?" How many of our neighbors need oxygen or a CPAP to breathe, a wheelchair to move, or a nebulizer to treat their child's asthma? How many babies need the protection of apnea monitors in their first weeks of life? Most Nevadans, or their families, will be impacted in their lifetimes.

Vote YES on Question 4 because there are better ways to fund the state than on the backs of our sick, injured, and dying.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Josh Hicks (Chair), Alliance to Stop Taxes on the Sick and Dying PAC; Doug Bennett, Alliance to Stop Taxes on the Sick and Dying PAC; and Dr. Joseph Kenneth Romeo, private citizen. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact or impact on the public health, safety, and welfare. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

OVERVIEW

Question 4 proposes to amend Article 10 of the *Nevada Constitution* by adding a new section, designated Section 7, that would require the Legislature to provide by law for an exemption from the sales and use tax for durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for human use by a licensed provider of health care acting within his or her scope of practice.

FINANCIAL IMPACT OF QUESTION 4

Under current law, the statewide sales and use tax rate is 6.85 percent. Four separate tax rates make up this combined rate:

- The State rate (2 percent), which is deposited in the State General Fund;
- The Local School Support Tax rate (2.6 percent), which is distributed among the state's school districts and to the State Distributive School Account;
- The Basic City-County Relief Tax rate (0.5 percent), which is distributed among counties, cities, and other local government entities through the Consolidated Tax Distribution (CTX) mechanism; and
- The Supplemental City-County Relief Tax rate (1.75 percent), which is distributed among counties, cities, and other local government entities through the CTX mechanism.

In addition, in thirteen of Nevada's seventeen counties (Carson City, Churchill, Clark, Douglas, Elko, Lander, Lincoln, Lyon, Nye, Pershing, Storey, Washoe, and White Pine), additional local sales and use tax rates are levied for specific purposes through legislative authority or by voter approval. The revenue from these tax rates is distributed to the entity or for the purpose for which the rate is levied.

If voters approve Question 4 at the November 2016 and November 2018 General Elections, the Legislature and Governor would need to approve legislation to implement the sales and use tax exemptions specified within the question before these exemptions could become effective. The legislation providing an exemption from the sales and use tax for durable medical equipment, oxygen delivery equipment, and mobility enhancing equipment prescribed for human use by a licensed provider of health care acting within his or her scope of practice will reduce the amount of sales and use tax revenue that is received by the state and local governments, including school districts, currently entitled to receive sales and use tax revenue from any of the rates imposed, beginning on the effective date of the legislation.

However, the Fiscal Analysis Division cannot determine when the Legislature and Governor will approve the legislation necessary to enact these exemptions or the effective date of the legislation that is approved. Additionally, the Fiscal Analysis Division cannot determine how the terms specified within Question 4 would be defined in the legislation, nor can it estimate the amount of sales that would be subject to the exemption. Thus, the revenue loss to the affected

state and local governments cannot be determined by the Fiscal Analysis Division with any reasonable degree of certainty.

The Department of Taxation has indicated that the implementation and administration of the exemptions specified within Question 4 can be performed using current resources, resulting in no additional financial impact upon state government.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – August 10, 2016

MEDICAL PATIENT TAX RELIEF ACT

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

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 20. Article 10 of the Nevada Constitution is hereby amended by adding thereto a new section to be designated as Section 7, to read as follows:

Sec. 7. ***The legislature shall provide by law for the exemption of durable medical equipment, oxygen delivery equipment and mobility enhancing equipment prescribed for human use by a licensed provider of health care acting within his or her scope of practice from any tax upon the sale, storage, use or consumption of tangible personal property.***