

QUESTION NO. 2

Amendment to the Nevada Constitution

CONDENSATION (Ballot Question)

Shall Article 1 of the Nevada Constitution be amended in order: to provide that the transfer of property from one private party to another private party is not considered a public use; to provide that property taken for a public use must be valued at its highest and best use; to provide that fair market value in eminent domain proceedings be defined as the “highest price the property would bring on the open market;” and to make certain other changes related to eminent domain proceedings?

Yes.....

No.....

EXPLANATION (Ballot Question)

The proposed amendment, if passed, would create a new section within Article 1 of the Nevada Constitution. The amendment provides that the transfer of property taken in an eminent domain action from one private party to another private party would not be considered taken for a public use.

The State or its political subdivisions or agencies would not be allowed to occupy property taken in an eminent domain action until the government provides a property owner with all government property appraisals. The government would have the burden to prove that any property taken was taken for a public use.

If property is taken by the State or its political subdivisions or agencies for a public use, the property must be valued at its highest and best use. In an eminent domain action, just compensation would be considered a sum of money that puts a property owner in the same position as if the property had not been taken, and includes compounded interest and reasonable costs and expenses. Fair market value, for eminent domain purposes, would be defined as the “highest price the property would bring on the open market.”

If property taken in an eminent domain proceeding is not used for the purpose the property was taken for within five years, the original property owner would be able to reclaim the property upon repayment of the original purchase price.

ARGUMENT ADVOCATING PASSAGE

Question 2 is a response to the Supreme Court decision in *Kelo v. the City of New London* which expanded the definition of “public use” to include increasing city hall’s tax base. It is also a response to the failure of the Nevada Supreme Court which made the same ruling three years ago in *Pappas v. the City of Las Vegas Redevelopment Agency* authored by Justice Nancy Becker. Suzette Kelo’s home was taken by the government and given to a developer who wanted to build

more expensive homes. In *Pappas*, the property was given to casinos. Transfers like this are absolutely “forbidden” under our proposed rules.

To help citizens whose homes are targeted to be “taken” by eminent domain, we are adding several new procedural protections. Before the government can force someone out of their home, the government will be required to provide the property owner with copies of ALL appraisals the government possesses. This will have the effect of helping a homeowner decide if the government is acting in “good faith.” Right now, a landowner is not entitled to these appraisals, until their property is taken, and they are in the middle of a costly lawsuit. If a landowner disagrees with the government’s decision that a project is a valid “public use,” the landowner has the right *to ask a jury to determine if* the “public use” is legitimate, before the government has the right to occupy the land. Under current rules, once the city council or county commission approves the decision of its bureaucrats that a certain project is a “public use,” the landowner has no remedy.

Lastly, if a landowner ends up in court in an eminent domain battle, we have added provisions to keep the playing field level. People who are standing their ground and fighting for their rights need not fear court costs and attorney’s fees, because judges will not have the power to award fees and costs if the landowner should lose.

Question 2 will prevent the government from automatically pulling the “trigger” of eminent domain, when it wants to take someone’s private property. It will give landowners legal weapons to fight back, when they find their land has been targeted for government seizure.

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

REBUTTAL TO ARGUMENT ADVOCATING PASSAGE

Contrary to what proponents say, Question 2 will hurt the great majority of Nevadans by slowing and in some cases stopping construction of needed highways and other public projects. If this question was truly about the *Kelo* decision, it should have stopped after section two. Instead, eight additional sections are included that we believe would primarily benefit trial lawyers and their special interest clients, with all extra costs to be borne by you the taxpayer!

Keep in mind that the Nevada Constitution provides a framework upon which a duly elected State Legislature may add laws. However, this proposal bypasses all public hearings, discussions, and debate in the Legislature, as well as the final review and action of the Governor. If the voters approve Question 2, ALL nine sections would go into effect, both good and bad! The process to fix the Constitution at a later date is both costly and lengthy, taking five years or longer.

Vote NO on this question! DO NOT clutter our Constitution with language that undermines local community control and your quality of life! Instead, require the newly elected Legislature and Governor to do their jobs by dealing with the *Kelo* issue in 2007.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

ARGUMENT OPPOSING PASSAGE

Voters Beware! Question 2 is *NOT* what it appears to be! The public should be suspicious of a proposal that adds over 400 words to Nevada's Constitution. Details like these belong in state law, not in the Constitution.

Question 2 fails the test of being in the public's best interest. Buried within are a number of provisions that primarily benefit a small number of lawyers and special interests. Current Nevada law requires payment of the "most probable price" when land is acquired for roads, schools, or other vital public facilities. However, this proposal requires payment of the "highest price." Further, we believe taxpayers may have to pay all lawyers fees and court expenses for any legal actions brought by private parties on eminent domain!

The total cost to Nevada's taxpayers is unknown, but every extra penny spent on settlement costs and attorney's fees may mean that fewer vital public projects get done. Nevada's Department of Transportation and the Regional Transportation Commission of Washoe County have estimated that this proposal will cost taxpayers a minimum of \$640 million more for transportation projects over the next ten years. Further, because Question 2 appears to violate federal transportation regulations, Nevada may lose an estimated \$210 million each year in federal highway funds.

Section 11 could greatly slow and increase the cost of constructing school, major road, water, flood control, or other vital public projects. It does this by requiring land acquired through eminent domain to be "used within five years for the original purpose stated," starting from the date the final order of condemnation is entered. Otherwise, such land automatically reverts back to the original property owner upon repayment of the purchase price. This would cause the eminent domain process to start all over again, with all the costs borne by Nevada's taxpayers! Acquisition of land and right-of-way, legal actions, and required environmental analyses all take time. Five years is an unreasonable time frame to put in our Constitution.

Vote *NO* on Question 2. It is not only misleading, it will be expensive for taxpayers and harmful to our communities! Your *NO* vote will send a message to the special interests backing this proposal that you want to stay in control of your community and protect your quality of life.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252

REBUTTAL TO ARGUMENT OPPOSING PASSAGE

Question 2 is a concise blueprint to restore valuable rights that once belonged to all homeowners. Until 1993, Nevada defined "just compensation" as the "highest price" the property would bring on the open market. Our legislature changed that definition after strong lobbying to the "most probable price." Today, only Nevada and a small minority of other states refuse to use the "highest price" definition.

If landowners are not entitled to the appraisals in the government's possession, how do they know whether the government is acting in good faith, or what price, their property is really worth?

The Legislature and Courts had their chances to save the rights of homeowners, but instead of protecting homeowners, they acted as accomplices in allowing those rights to be taken away. Our opponents think that adding 400 words to the Constitution is unnecessary. Their complaint is not with the number of words we use, but the number of protections you will have restored.

Lastly, we believe the government has fabricated impact costs as can be seen on the Secretary of State's website which states it is unknown if there will be an increase in costs, because if litigation decreases, so will the costs to the public.

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

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

Question 2 proposes to amend Article 1 of Nevada's Constitution regarding the determination of public use of property, payment for private property taken under eminent domain actions, and the rights of property owners in eminent domain actions. The provisions of Question 2 cannot become effective until after the 2008 General Election.

FINANCIAL IMPACT OF QUESTION 2

Question 2 declares that public use does not include transfers of property taken in an eminent domain proceeding from one private party to another private party. Although the use of this type of transfer of private property for projects by government entities is eliminated, an estimate of the financial impact to state and local governments planning to use this type of transfer after the effective date of the Question 2 cannot be determined.

The provision requiring taken or damaged property to be valued at its highest and best use potentially increases the costs incurred by state or local government entities to provide the required payments to property owners under eminent domain proceedings. Given the difficulty projecting the level and scope of eminent domain proceedings state and local governments may undertake after the effective date of the Question 2, the potential financial impact on state or local governments cannot be determined with any degree of certainty. The potential increase in the costs may cause government entities to forego certain projects requiring the taking of private property under eminent domain actions.

The provisions of the Question 2 may potentially increase the number of cases involving eminent domain actions. The potential increase in expenses incurred by state and district courts from handling a larger number of cases involving eminent domain actions cannot be determined with any degree of certainty.

The fiscal note was prepared by the Legislative Counsel Bureau pursuant to NRS 295.015

FULL TEXT OF MEASURE

(Sections 1, 3, 8, 9, and 10 have been stricken from the text of the measure by the Nevada Supreme Court in Nevadans for the Protection of Property Rights, Inc. et al v. Heller et al., 122 Nev. Adv. Op. 79 (Sept. 8, 2006))

NEVADA PROPERTY OWNERS BILL OF RIGHTS 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 2. Article 1 of the Constitution of the State of Nevada is hereby amended by adding thereto a new section to be designated section 22, to read as follows:

Sec. 22. Notwithstanding any other provision of this Constitution to the contrary:

- ~~1. All property rights are hereby declared to be fundamental constitutional rights and each and every right provided herein shall be self-executing.~~
- 2. Public use shall not include the direct or indirect transfer of any interest in property taken in an eminent domain proceeding from one private party to another private party. In all eminent domain actions, the government shall have the burden to prove public use.*
- ~~3. Unpublished eminent domain judicial opinions or orders shall be null and void.~~
- 4. In all eminent domain actions, prior to the government's occupancy, a property owner shall be given copies of all appraisals by the government and shall be entitled, at the property owner's election, to a separate and distinct determination by a district court jury, as to whether the taking is actually for a public use.*
- 5. If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.*
- 6. In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.*
- 7. In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.*
- ~~8. Government actions which result in substantial economic loss to private property shall require the payment of just compensation. Examples of such substantial economic loss include, but are not limited to, the down zoning of private property, the elimination of any access to private property, and limiting the use of private air space.~~
- ~~9. No Nevada state court judge or justice who has not been elected to a current term of office shall have the authority to issue any ruling in an eminent domain proceeding.~~
- ~~10. In all eminent domain actions, a property owner shall have the right to preempt one judge at the district court level and one justice at each appellate court level. Upon prior notice to all parties, the clerk of that court shall randomly select a currently elected district court judge to replace the judge or justice who was removed by preemption.~~

11. *Property taken in eminent domain shall automatically revert back to the original property owner upon repayment of the original purchase price, if the property is not used within five years for the original purpose stated by the government. The five years shall begin running from the date of the entry of the final order of condemnation.*

12. *A property owner shall not be liable to the government for attorney fees or costs in any eminent domain action.*

13. *For all provisions contained in this section, government shall be defined as the State of Nevada, its political subdivisions, agencies, any public or private agent acting on their behalf, and any public or private entity that has the power of eminent domain.*

14. *Any provision contained in this section shall be deemed a separate and freestanding right and shall remain in full force and effect should any other provision contained in this section be stricken for any reason.*

DESCRIPTION OF EFFECT

(Portions of the Description of Effect have been stricken to be consistent with the Nevada Supreme Court Order in Nevadans for the Protection of Property Rights, Inc. et al v. Heller et al., 122 Nev. Adv. Op. 79 (Sept. 8, 2006))

The following constitutional provisions shall supersede all conflicting Nevada law regarding eminent domain actions.

- ~~• Property rights are fundamental constitutional rights.~~
- Transfer of land from one private party to another private party is not public use.
- Before the government may occupy property, it must provide appraisals and prove the taking is for public use.
- Property must be valued at the use which yields the highest value.
- ~~• Government actions causing economic loss to property require the payment of just compensation.~~
- ~~• Only currently elected judges may issue eminent domain decisions, and such decisions must be published to be valid.~~
- ~~• In each action, the property owner may disqualify one judge at each judicial level.~~
- Just compensation is the sum of money including interest compounded annually necessary to put the owner in the same position without offsets as if the property was not taken.
- Property taken but not used within five years for the purpose for which it was taken must be returned to the owner.
- Fair market value is the highest price the property would bring on the open market.
- Property owners shall not be liable for the government's attorney fees or costs.