

SENATE JOINT RESOLUTION NO. 3—SENATORS
RHOADS, AMODEI AND MCGINNESS

FEBRUARY 20, 2007

Referred to Committee on Legislative Operations and Elections

SUMMARY—Proposes to amend the Nevada Constitution to revise certain provisions relating to elections. (BDR C-260)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

SENATE JOINT RESOLUTION—Proposing to amend the Nevada Constitution to provide that a person must be a resident of the State for 30 days before an election to be eligible to vote in that election, to require that an initiative petition be proposed by a number of registered voters equal to a certain percentage of registered voters who voted in the last preceding election and to remove requirements concerning affidavits that must be affixed to referendum petitions and initiative petitions.

Legislative Counsel's Digest:

Existing law provides that a citizen of the United States who is at least 18 years of age and who has actually, as opposed to constructively, resided in the State for at least 6 months and in the district or county for at least 30 days before an election is eligible to vote. (Nev. Const. Art. 2, § 1)

The United States Supreme Court, in several decisions, has ruled that residency requirements which exceed the amount of time required to complete election administrative procedures do not further any compelling state interest and violate the equal protection clause of the Fourteenth Amendment of the U.S. Constitution. (*Dunn v. Blumstein*, 92 S. Ct. 995 (1972); *Marston v. Lewis*, 93 S. Ct. 1211 (1973); *Burns v. Fortson*, 93 S. Ct. 1209 (1973))

This resolution proposes to amend the Nevada Constitution to eliminate the 6-month state residency requirement. A person will be eligible to vote after residing for 30 days in a district or county in this State.

Existing law requires that an initiative petition be signed by at least 10 percent of the voters who voted at the last preceding general election in at least 75 percent of the counties in the State. (Nev. Const. Art. 19, § 2)

The United States District Court for the District of Nevada declared that the above portion of Section 2 of Article 19 of the Nevada Constitution violates the



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Equal Protection Clause of the United States Constitution because it applies the same formula to counties of varying population. Such application results in the signatures of voters from small, rural counties carrying more weight than the signatures of voters from larger counties. (*Committee to Regulate and Control Marijuana v. Heller*, No. CV-S-04-01035 (D. Nev. Aug. 20, 2004)) The United States Court of Appeals for the Ninth Circuit affirmed the decision of the United States District Court. (*American Civil Liberties Union of Nevada v. Lomax*, 471 F.3d 1010 (9th Cir. Nev. 2006))

This resolution proposes to amend the Nevada Constitution to remove those provisions which were found unconstitutional and replace them with a requirement that an initiative petition must be signed by a number of registered voters that equals at least 10 percent of the total number of voters who voted at the last preceding general election.

Existing law currently provides that there must be attached to each document in a referendum petition or initiative petition an affidavit stating that all the signatures on the document are genuine signatures of persons who are registered voters in the counties in which they reside, and that the affidavit must be executed before a person authorized by law to administer oaths in Nevada, such as a notary public. (Nev. Const. Art. 19, § 3) The Nevada Supreme Court has ruled that the affidavit requirements set forth in Section 3 of Article 19 of the Nevada Constitution are an impermissible burden on political speech and, therefore, unconstitutional under the First Amendment to the United States Constitution. (*Secretary of State v. Give Nevada a Raise, Inc.*, 120 Nev. 481 (2004))

This resolution proposes to amend the Nevada Constitution to remove the affidavit requirements set forth in Section 3 of Article 19.

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That Section 1 of Article 2 of the Nevada Constitution be amended to read as follows:

Section 1. All citizens of the United States (not laboring under the disabilities named in this constitution) of the age of eighteen years and upwards, who shall have actually, and not constructively, resided in the state ~~[six months,]~~ and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers that now or hereafter may be elected by the people, and upon all questions submitted to the electors at such election; provided, that no person who has been or may be convicted of treason or felony in any state or territory of the United States, unless restored to civil rights, and no person who has been adjudicated mentally incompetent, unless restored to legal capacity, shall be entitled to the privilege of an elector. There shall be no denial of the elective franchise at any election on account of sex. The legislature may provide by law the conditions under which a citizen of the United States who does not have the status of an elector in another state and who does not meet the residence requirements of this section may vote in this state for President and Vice President of the United States.



1 And be it further

2 RESOLVED, That Section 2 of Article 19 of the Nevada
3 Constitution be amended to read as follows:

4 Sec. 2. 1. Notwithstanding the provisions of Section 1
5 of Article 4 of this Constitution, but subject to the limitations
6 of Section 6 of this Article, the people reserve to themselves
7 the power to propose, by initiative petition, statutes and
8 amendments to statutes and amendments to this Constitution,
9 and to enact or reject them at the polls.

10 2. An initiative petition shall be in the form required by
11 Section 3 of this Article and shall be proposed by a *total*
12 number of registered voters equal to *at least* 10 percent ~~for~~
13 ~~more~~ of the number of voters who voted at the last preceding
14 general election ~~[in not less than 75 percent of the counties]~~
15 in the State . ~~[- but the total number of registered voters~~
16 ~~signing the initiative petition shall be equal to 10 percent or~~
17 ~~more of the voters who voted in the entire State at the last~~
18 ~~preceding general election.]~~

19 3. If the initiative petition proposes a statute or an
20 amendment to a statute, the person who intends to circulate it
21 shall file a copy with the Secretary of State before beginning
22 circulation and not earlier than January 1 of the year
23 preceding the year in which a regular session of the
24 Legislature is held. After its circulation, it shall be filed with
25 the Secretary of State not less than 30 days prior to any
26 regular session of the Legislature. The circulation of the
27 petition shall cease on the day the petition is filed with the
28 Secretary of State or such other date as may be prescribed for
29 the verification of the number of signatures affixed to the
30 petition, whichever is earliest. The Secretary of State shall
31 transmit such petition to the Legislature as soon as the
32 Legislature convenes and organizes. The petition shall take
33 precedence over all other measures except appropriation bills,
34 and the statute or amendment to a statute proposed thereby
35 shall be enacted or rejected by the Legislature without change
36 or amendment within 40 days. If the proposed statute or
37 amendment to a statute is enacted by the Legislature and
38 approved by the Governor in the same manner as other
39 statutes are enacted, such statute or amendment to a statute
40 shall become law, but shall be subject to referendum petition
41 as provided in Section 1 of this Article. If the statute or
42 amendment to a statute is rejected by the Legislature, or if no
43 action is taken thereon within 40 days, the Secretary of State
44 shall submit the question of approval or disapproval of such
45 statute or amendment to a statute to a vote of the voters at the



1 next succeeding general election. If a majority of the voters
2 voting on such question at such election votes approval of
3 such statute or amendment to a statute, it shall become law
4 and take effect upon completion of the canvass of votes by
5 the Supreme Court. An initiative measure so approved by the
6 voters shall not be amended, annulled, repealed, set aside or
7 suspended by the Legislature within 3 years from the date it
8 takes effect. If a majority of such voters votes disapproval of
9 such statute or amendment to a statute, no further action shall
10 be taken on such petition. If the Legislature rejects such
11 proposed statute or amendment, the Governor may
12 recommend to the Legislature and the Legislature may
13 propose a different measure on the same subject, in which
14 event, after such different measure has been approved by the
15 Governor, the question of approval or disapproval of each
16 measure shall be submitted by the Secretary of State to a vote
17 of the voters at the next succeeding general election. If the
18 conflicting provisions submitted to the voters are both
19 approved by a majority of the voters voting on such
20 measures, the measure which receives the largest number of
21 affirmative votes shall thereupon become law. If at the
22 session of the Legislature to which an initiative petition
23 proposing an amendment to a statute is presented which the
24 Legislature rejects or upon which it takes no action, the
25 Legislature amends the statute which the petition proposes to
26 amend in a respect which does not conflict in substance with
27 the proposed amendment, the Secretary of State in submitting
28 the statute to the voters for approval or disapproval of the
29 proposed amendment shall include the amendment made by
30 the Legislature.

31 4. If the initiative petition proposes an amendment to the
32 Constitution, the person who intends to circulate it shall file a
33 copy with the Secretary of State before beginning circulation
34 and not earlier than September 1 of the year before the year in
35 which the election is to be held. After its circulation it shall
36 be filed with the Secretary of State not less than 90 days
37 before any regular general election at which the question of
38 approval or disapproval of such amendment may be voted
39 upon by the voters of the entire State. The circulation of the
40 petition shall cease on the day the petition is filed with the
41 Secretary of State or such other date as may be prescribed for
42 the verification of the number of signatures affixed to the
43 petition, whichever is earliest. The Secretary of State shall
44 cause to be published in a newspaper of general circulation,
45 on three separate occasions, in each county in the State,



1 together with any explanatory matter which shall be placed
2 upon the ballot, the entire text of the proposed amendment. If
3 a majority of the voters voting on such question at such
4 election votes disapproval of such amendment, no further
5 action shall be taken on the petition. If a majority of such
6 voters votes approval of such amendment, the Secretary of
7 State shall publish and resubmit the question of approval or
8 disapproval to a vote of the voters at the next succeeding
9 general election in the same manner as such question was
10 originally submitted. If a majority of such voters votes
11 disapproval of such amendment, no further action shall be
12 taken on such petition. If a majority of such voters votes
13 approval of such amendment, it shall, unless precluded by
14 subsection 5 or 6, become a part of this Constitution upon
15 completion of the canvass of votes by the Supreme Court.

16 5. If two or more measures which affect the same
17 section of a statute or of the Constitution are finally approved
18 pursuant to this Section, or an amendment to the Constitution
19 is finally so approved and an amendment proposed by the
20 Legislature is ratified which affect the same section, by the
21 voters at the same election:

22 (a) If all can be given effect without contradiction in
23 substance, each shall be given effect.

24 (b) If one or more contradict in substance the other or
25 others, the measure which received the largest favorable vote,
26 and any other approved measure compatible with it, shall be
27 given effect. If the one or more measures that contradict in
28 substance the other or others receive the same number of
29 favorable votes, none of the measures that contradict another
30 shall be given effect.

31 6. If, at the same election as the first approval of a
32 constitutional amendment pursuant to this Section, another
33 amendment is finally approved pursuant to this Section, or an
34 amendment proposed by the Legislature is ratified, which
35 affects the same section of the Constitution but is compatible
36 with the amendment given first approval, the Secretary of
37 State shall publish and resubmit at the next general election
38 the amendment given first approval as a further amendment
39 to the section as amended by the amendment given final
40 approval or ratified. If the amendment finally approved or
41 ratified contradicts in substance the amendment given first
42 approval, the Secretary of State shall not submit the
43 amendment given first approval to the voters again.

44 And be it further



1 RESOLVED, That Section 3 of Article 19 of the Nevada
2 Constitution be amended to read as follows:

3 Sec. 3. 1. Each referendum petition and initiative
4 petition shall include the full text of the measure proposed.
5 Each signer shall affix thereto his or her signature, residence
6 address and the name of the county in which he or she is a
7 registered voter. The petition may consist of more than one
8 document . ~~[, but each document shall have affixed thereto an~~
9 ~~affidavit made by one of the signers of such document to the~~
10 ~~effect that all of the signatures are genuine and that each~~
11 ~~individual who signed such document was at the time of~~
12 ~~signing a registered voter in the county of his or her~~
13 ~~residence. The affidavit shall be executed before a person~~
14 ~~authorized by law to administer oaths in the State of Nevada.~~
15 ~~The enacting clause of all statutes or amendments proposed~~
16 ~~by initiative petition shall be: "The People of the State of~~
17 ~~Nevada do enact as follows:"]~~

18 2. The Legislature may authorize the Secretary of State
19 and the other public officers to use generally accepted
20 statistical procedures in conducting a preliminary verification
21 of the number of signatures submitted in connection with a
22 referendum petition or an initiative petition, and for this
23 purpose to require petitions to be filed no more than 65 days
24 earlier than is otherwise required by this Article.

25 And be it further

26 RESOLVED, That the provisions of Assembly Joint Resolution
27 No. 10 of the 73rd Session of the Nevada Legislature are hereby
28 repealed.

29 And be it further

30 RESOLVED, That the provisions of Senate Joint Resolution No. 1
31 of the 74th Session of the Nevada Legislature are hereby repealed.

