

QUESTION NO. 4

Amendment to the Ordinance of the Nevada Constitution

Senate Joint Resolution No. 27 of the 67th Session

CONDENSATION (ballot question)

Shall the Territorial Ordinance of the Nevada Constitution be amended to remove the disclaimer of the state's interest in the unappropriated public lands?

Yes

No

EXPLANATION

On March 21, 1864, the United States Congress passed legislation enabling the people of the Territory of Nevada to form a constitution and establish a state government. Section 4 of this Enabling Act required the new state to prohibit slavery, to allow religious freedom, and to include a disclaimer which purportedly forever allowed the Federal Government to control much of the land within the boundaries of the state. This land was referred to as the "unappropriated public lands." These conditions were included in the "Ordinance" of Nevada's original constitution, which was approved by the voters on September 7, 1864, and by President Abraham Lincoln who proclaimed Nevada's statehood on October 31, 1864.

The proposed amendment would remove that provision from the "Ordinance" which reads that the people of the Territory of Nevada "forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States." The proposed amendment, if approved, does not become effective until the Congress of the United States consents to the amendment or until a court decides that such congressional action is not needed.

A "Yes" vote is a vote to remove the disclaimer from the ordinance.

A "No" vote is a vote to leave the disclaimer in the ordinance.

ARGUMENTS FOR PASSAGE

The intent of the founding fathers of this country was to guarantee that any new state admitted to the Union would be treated in the same way and placed on an equal footing with the original states. None of the original 13 states was required to disclaim all right and title to its unappropriated public lands. It should be noted that approximately 87 percent of the land in Nevada is controlled by the Federal Government, over half of which is unappropriated public land. Of the 50 states, only 27 were purportedly required to disclaim all right and title to their public lands as a condition of statehood. The disclaimer in Nevada's Ordinance violated the guarantee that Nevada would be treated in the same way as the original states. Additionally, in lawsuits against the State of Nevada, the Federal Government continues



to rely on the disclaimer to support its position that it should keep control over that land in Nevada. Therefore, the disclaimer should be removed from the Ordinance of the Nevada Constitution.

ARGUMENTS AGAINST PASSAGE

In 1864, eligible voters of the Territory of Nevada disclaimed all right and title to the unappropriated public lands as a condition of statehood. Further, the federal Enabling Act specified that the disclaimer was "irrevocable" unless the United States and the people of Nevada both agree to remove it. Even if Nevadans approve Question 4, their approval does not guarantee that Congress will agree to remove the disclaimer.

FISCAL NOTE

Financial Impact - Cannot be determined. The proposal to amend the ordinance of the Nevada Constitution would remove the disclaimer of the interest of the state in unappropriated public lands. The fiscal effect would be determined by subsequent actions of the Federal Government and persons who may take advantage of the provision.

FULL TEXT OF THE MEASURE

SENATE JOINT RESOLUTION—Proposing to amend the ordinance of the Nevada constitution to repeal the disclaimer of interest of the state in unappropriated public lands.

WHEREAS, The State of Nevada has a strong moral claim upon the public land retained by the Federal Government within Nevada's borders; and

WHEREAS, On October 31, 1864, the Territory of Nevada was admitted to statehood on the condition that it forever disclaim all right and title to unappropriated public land within its boundaries; and

WHEREAS, Nevada received the least amount of land 2,572,478 acres, and the smallest percentage of its total area, 3.9 percent, of the land grant states in the Far West admitted after 1864, while states of comparable location and soil, including Arizona, New Mexico and Utah, received approximately 11 percent of their total area in federal land grants; and

WHEREAS, The State of Texas, when admitted to the Union in 1845, retained ownership of all unappropriated land within its borders; and

WHEREAS, The federal holdings in the State of Nevada constitute 86.7 percent of the area of the state, and in Esmeralda, Lincoln, Mineral, Nye and White Pine counties the Federal Government controls from 97 to 99 percent of the land; and

WHEREAS, The federal jurisdiction over the public domain is shared among several federal agencies or departments which causes problems concerning the proper management of the land and disrupts the normal relationship between a state, its residents and its property; and

WHEREAS, The intent of the framers of the Constitution of the United States was to guarantee to each of the states sovereignty over all matters within its boundaries except for those powers specifically granted to the United States as agent of the states; and

WHEREAS, The exercise of dominion and control of the public lands within the State of Nevada by the United States works a severe, continuous and debilitating hardship upon the people of the State of Nevada; now, therefore, be it

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That the ordinance of the constitution of the State of Nevada be amended to read as follows:

In obedience to the requirements of an act of the Congress of the United States, approved March twenty-first, A.D. eighteen hundred and sixty-four, to enable the people of Nevada to form a constitution and state government, this convention,

elects and convenes in obedience to said enabling act, do ordain as follows, and this ordinance shall be irrevocable, without the consent of the United States and the people of the State of Nevada:

First. That there shall be in this state neither slavery nor involuntary servitude, otherwise than in the punishment for crimes, whereof the party shall have been duly convicted.

Second. That perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested, in person or property, on account of his or her mode of religious worship.

Third. That the people inhabiting said territory do agree and declare, that [they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States; and that] lands belonging to citizens of the United States, residing without the said state, shall never be taxed higher than the land belonging to the residents thereof; and that no taxes shall be imposed by said state on lands or property therein belonging to, or which may hereafter be purchased by, the United States, unless otherwise provided by the Congress of the United States.

And be it further

RESOLVED, That the Legislature of the State of Nevada hereby urges the Congress of the United States to consent to the amendment of the ordinance of the Nevada constitution to remove the disclaimer concerning the right of the Federal Government to sole and entire disposition of the unappropriated public lands in Nevada; and be it further

RESOLVED, That, upon approval and ratification of the amendment proposed by this resolution by the people of the State of Nevada, copies of this resolution be prepared and transmitted by the Secretary of the Senate to the Vice President of the United States as presiding officer of the Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage and approval, except that, notwithstanding any other provision of law, the proposed amendment to the ordinance of the constitution of the State of Nevada, if approved and ratified by the people of the State of Nevada, does not become effective until the Congress of the United States consents to the amendment or upon a legal determination that such consent is not necessary.

