

## **QUESTION NO. 5**

### **Amendment to the Nevada Constitution**

#### **CONDENSATION (ballot question)**

**Shall the Nevada Constitution be amended to penalize lawyers willfully involved in vexatious and frivolous litigation, and to prohibit certain changes to limits on recovery of monetary damages?**

#### **EXPLANATION**

The proposed amendment, if passed, would create a new section of the Nevada Constitution. The amendment provides that a lawyer willfully involved in vexatious and frivolous litigation is personally responsible for attorney's fees, court costs, and expenses of an aggrieved party, in addition to any other sanction that may be imposed. "Vexatious and frivolous" means filing or defending a lawsuit solely to harass the opposing party or to seek economic gain unrelated to the merits of the lawsuit. The amendment also voids any changes made to Nevada law between January 1, 2004, and December 1, 2006, that decrease the dollar amount of damages persons may recover for losses and harm caused to them as a result of the negligent or wrongful conduct of another person. The amendment does not prohibit the Legislature from: (1) increasing the amount of monetary damages a person may recover caused by the negligent or wrongful conduct of another; or (2) repealing laws which limit damages. Any other changes to such laws are deemed void.

#### **ARGUMENT IN SUPPORT OF QUESTION NO. 5**

For years, insurance companies have said that "frivolous lawsuits" cost consumers astronomical increases in their insurance premiums. Solution? Stop frivolous lawsuits. A "YES" vote on Question 5 will do just that. Vote "YES" on Question 5 and the Nevada Constitution will be amended to hold the lawyers and corporations who file frivolous lawsuits directly responsible for the financial cost of their unfounded lawsuits.

By directly punishing the lawyer or corporation responsible for actually filing the lawsuit, two things are accomplished: (1) the real cost burden is placed on the party truly responsible for the frivolous lawsuit – the lawyer or corporation, and (2) imposing these financial burdens on the responsible parties will publicly discourage other lawyers and corporations from pursuing other frivolous lawsuits.

As a result of passing Question 5, the insurance companies will not have to pay for frivolous suits against them and their clients and the savings will be realized in reduced premiums for consumers.

Question 5 provides that any lawyer who knowingly participates in perpetuating a frivolous lawsuit or defending a lawsuit for frivolous reasons will be held personally

liable for the attorney fees, court costs and expenses incurred by the other side in defending against that vexatious or frivolous lawsuit.

Question 5 also makes it clear that every citizen will continue to have the right to pursue real, legitimate claims. Individuals should not be restricted or curtailed in any way to pursue their legitimate claims.

Just as an insurance company has a right to file legitimate claims, so should individuals. Just as an insurance company has a right to hire any attorney they want to hire, so should any citizen have that same right in order to seek justice under the law, without government interference.

These are the rights of every Nevadan and Question 5 recognizes these rights.

Question 5 is a pro-consumer measure designed to protect an individual's right to pursue legitimate claims while placing the financial responsibility for frivolous lawsuits directly and exclusively on those who pursue frivolous lawsuits.

Question 5 protects your rights – and the rights of all Nevadans. Vote YES on Question 5.

### **REBUTTAL TO ARGUMENT IN SUPPORT OF QUESTION NO. 5**

Nevada's personal injury attorneys say they qualified Question 5 to put an end to frivolous lawsuits.

Who do they think they're kidding? They're the ones who **FILE** frivolous lawsuits!

Lawyers collect nearly one-half of all the money awarded in lawsuits, which explains why there are so many frivolous suits. Question 5 would prevent the legislature from ever correcting this injustice. Question 5 also prohibits judges from reducing outrageous jury awards or cutting attorneys' fees to make sure the victim's lawyer doesn't walk off with more money than an injured party.

Existing law already allows judges to punish attorneys for bringing frivolous lawsuits. This proposal would actually make it easier for attorneys to file these lawsuits because it makes it harder for a judge to declare them frivolous.

Nevada has been plagued with a host of problems related to unnecessary lawsuits against contractors, cities, counties, schools, non-profit organizations, nursing homes, hospitals and doctors. Question 5 was put on the ballot to stop lawmakers from doing their job of preventing consumers and taxpayers from being gouged by frivolous lawsuits.

Don't use our constitution to give lawyers a blank check. Vote NO on Question 5.

## **ARGUMENT AGAINST QUESTION NO. 5**

Nearly one-half of the money awarded in lawsuits goes to pay lawyers and legal expenses. Question 5 locks this unfair practice into the Nevada constitution, preventing the legislature from ever limiting excessive attorneys' fees or court awards. Personal injury lawyers win. Consumers lose.

Do personal injury attorneys really expect voters to believe they paid to put Question 5 on the ballot because it will limit frivolous lawsuits?

Question 5 does exactly the opposite. It encourages frivolous lawsuits because it adds a provision to the constitution that only cases determined to be 100% frivolous are subject to sanctions. A lawyer cannot be sanctioned for filing a lawsuit that is only 95% frivolous.

Isn't it just like the personal injury lawyers to write something that does the opposite of what they claim?

Here are the facts about Question 5:

Legal fees and jury awards have driven the cost of malpractice insurance in Nevada to among the highest in the nation. As a result, doctors have left the state, and Nevada ranks near the bottom nationally in number of doctors per resident. This shortage will grow as our population grows. With fewer healthcare providers, people cannot get medical treatment they need.

Higher medical malpractice costs mean higher healthcare costs for everyone. Fewer employers will be able to provide healthcare coverage to their employees; out-of-pocket costs for employees increase; fewer people will be able to afford coverage for themselves.

What's the real reason personal injury attorneys put Question 5 on the ballot? In 2002, the state legislature capped the fees that attorneys can collect in medical malpractice cases. To make certain their hefty fees are never limited, personal injury lawyers qualified Question 5 for the ballot.

Question 5 also prohibits judges from reducing grossly inflated jury awards or attorneys' fees. Remember the woman who sued McDonalds after spilling coffee in her lap? If Question 5 becomes part of our constitution, there would be nothing a judge could do to reduce outrageous awards or excessive attorneys' fees. If Question 5 becomes part of our constitution, lawyers can walk away with more money than the person for whom the award was intended.

Lawsuits already cost each and every Nevadan \$809 per year. Question 5 will result in fewer doctors, higher healthcare costs, less access to healthcare, more lawsuits and higher attorney fees. It has no place in the Nevada Constitution. Vote NO on Question 5.

## **REBUTTAL TO ARGUMENT AGAINST QUESTION NO. 5**

Why are the big East Coast insurance companies and other special interests lying about Question 5?

Because they don't want a fair and impartial system of justice.

*They want to take away your right to protect yourself when they rip you off.*

Example: If you have fire damage to your home, and your insurance company "low-balls" you by refusing to pay in full, you can take your insurer to court and a jury can order the company to pay. But insurance companies say that such lawsuits are "frivolous." They are lobbying the politicians to eliminate your legal rights -- -- even your right to hire a lawyer!

Question 5 improves Nevada's legal system by punishing bad lawyers and truly frivolous lawsuits. But it also preserves your right to bring a legitimate case before a jury – a right that's been in the State Constitution since 1864.

Question 5 safeguards your right to:

Hire an attorney without interference from the government;

A fair trial before a jury of your fellow citizens;

Full compensation for injuries cause by negligent corporations and individuals.

Defend Nevada's Constitution against the greedy special interests. Please vote YES on Question 5.

### **FISCAL NOTE**

#### **Financial Impact – Cannot be determined.**

Although the proposal to amend the *Nevada Constitution* would provide that a lawyer willfully involved in vexatious and frivolous litigation is personally responsible for attorney's fees, court costs and expenses of the aggrieved party, the financial impacts, if any, of this proposal on a particular individual or business willfully involved in vexatious and frivolous litigation cannot be determined.