

## STATE QUESTION NO. 2

### Amendment to the Nevada Constitution

#### 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 1.** 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 Unpublished eminent domain judicial opinions or orders shall be null and void.~~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.