

## QUESTION NO. 2

Amendment to the *Nevada Constitution*

Assembly Joint Resolution No. 10 of the 80<sup>th</sup> Session

### CONDENSATION (Ballot Question)

Shall the *Nevada Constitution* be amended, effective July 1, 2024, to: (1) establish the State’s minimum wage that employers must pay to certain employees at a rate of \$12 per hour worked, subject to any applicable increases above that \$12 rate provided by federal law or enacted by the Nevada Legislature; (2) remove the existing provisions setting different rates for the minimum wage based on whether the employer offers certain health benefits to such employees; and (3) remove the existing provisions for adjusting the minimum wage based on applicable increases in the cost of living?

Yes       No

### EXPLANATION & DIGEST

**EXPLANATION**—This ballot measure amends the *Nevada Constitution* to require that, beginning July 1, 2024, each employer must pay each employee to whom the minimum wage requirements apply (referred to as a “nonexempt employee”) a minimum wage of not less than \$12 per hour worked, subject to any applicable increases above \$12 per hour worked provided by federal law or enacted by the Legislature.

This ballot measure further removes from the *Nevada Constitution*, effective July 1, 2024, the existing provisions allowing an employer that offers certain health benefits to nonexempt employees to pay a minimum wage of \$1 per hour less than an employer that does not offer such health benefits to nonexempt employees.

This ballot measure also removes from the *Nevada Constitution*, effective July 1, 2024, the existing provisions adjusting the State’s minimum wage rates based on the greater of certain increases in the federal minimum wage or certain increases in the cost of living measured by percentage increases in the Consumer Price Index (CPI), with caps on the cost-of-living increases for the adjusted rates. However, this ballot measure requires the State’s minimum wage to be increased based on applicable increases in the federal minimum wage, providing that if, at any time, the federal minimum wage is greater than \$12 per hour worked, the State’s minimum wage is increased to the amount established for the federal minimum wage, unless the Legislature establishes, by state statute, a minimum wage that is greater than the federal minimum wage as permitted by federal law.

This ballot measure additionally expresses in the *Nevada Constitution* the existing authority of the Legislature to establish, by state statute, a minimum wage that is greater than the minimum hourly rate required by the *Nevada Constitution*.

If approved by the voters, this ballot measure supersedes any conflicting provisions in the State's existing minimum wage statutes which, on July 1, 2024, require an employer to pay a minimum wage of \$11 per hour worked, if the employer offers certain health benefits to nonexempt employees, or \$12 per hour worked, if the employer does not offer such health benefits to nonexempt employees, unless the Legislature amends those existing statutes to conform to this ballot measure before that date.

**A “Yes” vote would, effective July 1, 2024: (1) add provisions in the *Nevada Constitution* establishing the State’s minimum wage that employers must pay to nonexempt employees at a rate of \$12 per hour worked, subject to any applicable increases above that \$12 rate provided by federal law or enacted by the Legislature; (2) remove the existing provisions in the *Nevada Constitution* setting different rates for the minimum wage based on whether the employer offers certain health benefits to such employees; and (3) remove the existing provisions in the *Nevada Constitution* for adjusting the minimum wage based on applicable increases in the cost of living, with caps on the cost-of-living increases for the adjusted rates.**

**A “No” vote would: (1) keep the State’s existing minimum wage, subject to any applicable increases or decreases provided by federal law or enacted by the Legislature; (2) keep the existing provisions in the *Nevada Constitution* setting different rates for the minimum wage based on whether the employer offers certain health benefits to nonexempt employees; and (3) keep the existing provisions in the *Nevada Constitution* for adjusting the minimum wage based on the greater of applicable increases in the federal minimum wage or applicable increases in the cost of living, with caps on the cost-of-living increases for the adjusted rates.**

**DIGEST**—The federal Fair Labor Standards Act (FLSA) requires employers to pay nonexempt employees a prescribed minimum wage for each hour of work. (29 U.S.C. § 206) However, the FLSA expressly authorizes states to establish a minimum wage which is higher than the minimum wage required under federal law. (29 U.S.C. § 218) If a nonexempt employee is subject to both the federal and state minimum wage laws, the employee is entitled to the higher of the two minimum wages. (29 U.S.C. § 218)

At the 2006 General Election, Nevada voters amended the *Nevada Constitution* to establish a two-tier minimum wage system whereby an employer that offers certain health benefits to nonexempt employees may pay a minimum wage of \$1 per hour less than an employer that does not offer such health benefits to nonexempt employees. The 2006 amendment to the *Nevada Constitution* required: (1) an employer to pay a minimum wage rate of \$5.15 per hour worked, if the employer offers certain health benefits to nonexempt employees, or a minimum wage rate of \$6.15 per hour worked, if the employer does not offer such health benefits to nonexempt employees; and (2) both minimum wage rates to be adjusted by the amount of any increase in the federal minimum wage over \$5.15 per hour or, if greater, by the cumulative increase

in the cost of living measured by percentage increases in the CPI, except that the CPI adjustment for any one-year period cannot exceed 3 percent. To offer health benefits for purposes of the 2006 amendment, an employer must make health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer. (Nev. Const. Art. 15, §16)

Because federal law authorizes a state to establish a higher minimum wage than the federal minimum wage and nothing in the *Nevada Constitution* prohibits or limits the Legislature's authority to do so, the Legislature established the following minimum wage rates, effective July 1, 2019: (1) \$7.25 per hour worked, if the employer offered certain health benefits to nonexempt employees; or (2) \$8.25 per hour worked, if the employer did not offer such health benefits to nonexempt employees. The Legislature also provided for increases to these minimum wage rates of 75 cents per fiscal year for the next five fiscal years. Beginning July 1, 2024, unless amended by the Legislature before that date, the minimum wage rates established in existing statute will be \$11 per hour worked, if the employer offers certain health benefits to nonexempt employees, or \$12 per hour worked, if the employer does not offer such health benefits to nonexempt employees. (NRS 608.250)

This ballot measure amends the *Nevada Constitution*, effective July 1, 2024, to require an employer to pay nonexempt employees a minimum wage of \$12 per hour worked, subject to any applicable increases above \$12 per hour worked provided by federal law or enacted by the Legislature. This ballot measure also eliminates the two-tiered minimum wage system that is based on whether the employer offers certain health benefits to nonexempt employees. Because the State's existing statutory rates for the minimum wage are based on that two-tiered system, this ballot measure supersedes any conflicting statutory rates beginning on July 1, 2024, unless the Legislature amends such rates to conform to this ballot measure before that date. Therefore, this ballot measure requires an employer, effective July 1, 2024, to pay nonexempt employees a minimum wage of \$12 per hour worked, regardless of whether the employer offers certain health benefits to those nonexempt employees, subject to any applicable increases in the minimum wage above \$12 per hour worked provided by federal law or enacted by the Legislature.

This ballot measure also removes from the *Nevada Constitution*, effective July 1, 2024, the existing provisions for adjusting the minimum wage based on the greater of applicable increases in the federal minimum wage or applicable increases in the cost of living, with caps on the cost-of-living increases for the adjusted rates. However, this ballot measure provides that if, at any time, the federal minimum wage is greater than \$12 per hour worked, the State's minimum wage is increased to the amount established for the federal minimum wage, unless the Legislature establishes, by state statute, a minimum wage that is greater than the federal minimum wage as permitted by federal law.

Finally, this ballot measure expresses in the *Nevada Constitution* the existing authority of the Legislature to establish, by state statute, a minimum wage that is greater than the minimum hourly rate required by the *Nevada Constitution*.

## **ARGUMENTS FOR PASSAGE**

Nevada's workers deserve a constitutionally guaranteed increase in the minimum wage. Approval of Question 2 will ensure that effective July 1, 2024, workers will be paid a minimum wage of \$12 per hour, which cannot be decreased by the Legislature but only increased above the \$12 per hour rate. Even though the Legislature passed a law in 2019 requiring annual increases in the minimum wage through July 1, 2024, any future Legislature may change that law and potentially lower the minimum wage. This ballot measure will constitutionally guarantee that Nevada's minimum wage cannot be lowered below \$12 per hour based on the political mood of the day.

Approval of Question 2 will also eliminate the outdated and ineffective method for making cost-of-living adjustments in the minimum wage currently in the *Nevada Constitution*. Even though the *Nevada Constitution* currently provides for an annual adjustment in the minimum wage to compensate for certain increases in the cost of living, those annual adjustments are capped, and they have never kept up with the true cost of living for Nevada's workers. In fact, it will take over a decade after July 1, 2024, for the cost-of-living adjustments currently provided by the *Nevada Constitution* to exceed the \$12 per hour minimum wage guaranteed by Question 2. Nevada's workers should not have to wait for more than a decade for a constitutionally guaranteed minimum wage of \$12 per hour.

Finally, approval of Question 2 will eliminate the outdated and ineffective two-tiered minimum wage system currently in the *Nevada Constitution* that allows employers to lower their minimum wage by \$1 per hour just for offering certain health benefits to employees and their dependents, even when the employees reject the health benefits being offered. Nevada's workers should not be penalized with a lower minimum wage solely because their employers offer certain health benefits, especially when those health benefits are rejected because workers can secure better or more cost-effective health benefits from alternative sources, such as a health insurance exchange. Nevada is the only state to have such a complicated and unfair two-tiered minimum wage system. It is time to eliminate that undesirable system from the *Nevada Constitution* and constitutionally guarantee a minimum wage of \$12 per hour for Nevada's workers, regardless of whether their employers offer any health benefits.

It is time to update the minimum wage to better serve Nevadans. Vote "Yes" on Question 2.

## **ARGUMENTS AGAINST PASSAGE**

Question 2 is an unnecessary change to the *Nevada Constitution* because the Legislature already has the authority to enact statutory increases in the minimum wage, and it has done so. In 2019, after receiving input from both workers and employers, the Legislature passed a law requiring annual increases in the minimum wage through July 1, 2024, when the statutory minimum wage will be set at \$11 per hour, if the employer offers certain health benefits, or \$12 per hour, if the

employer does not offer certain health benefits. There is no need to establish the minimum wage at \$12 per hour in the *Nevada Constitution* when the Legislature already has enacted an increased statutory minimum wage and has the authority to enact additional increases in the statutory minimum wage above the \$12 per hour proposed by Question 2.

Approval of Question 2 will also harm Nevada’s workers because it sets the minimum wage at \$12 per hour in the *Nevada Constitution* without providing any method for making cost-of-living adjustments in the minimum wage as currently provided by the *Nevada Constitution*. Although the Legislature has established the statutory minimum wage at a higher rate than currently required by the *Nevada Constitution*, the existing method in the *Nevada Constitution* for making cost-of-living adjustments in the minimum wage ensures that the minimum wage will eventually increase above \$12 per hour given that increases in the cost of living will continue to occur. Because this ballot measure will remove the existing method for making cost-of-living adjustments from the *Nevada Constitution* and will not require any form of cost-of-living adjustments in the minimum wage, approval of Question 2 will harm Nevada’s workers by removing an important constitutional safeguard against the ever-increasing cost of living for Nevada’s workers.

Finally, approval of Question 2 will harm Nevada’s workers and employers by removing the existing incentive in the *Nevada Constitution* that encourages employers to offer certain health benefits to employees and their dependents in exchange for lowering the employees’ minimum wage by \$1 per hour. Because health benefits offered by employers may be the best source of affordable health benefits for some employees and their dependents, the existing incentive in the *Nevada Constitution* encourages employers to continue offering those benefits to employees and their dependents, thereby ensuring access to affordable health care. Because this ballot measure will remove the existing incentive from the *Nevada Constitution* and discourage employers from continuing to offer such health benefits, approval of Question 2 will harm the employers that have relied on the existing incentive to conduct their businesses, along with the employees who have relied on the health benefits to cover themselves and their dependents.

Question 2 is an unnecessary change to the *Nevada Constitution* that will harm Nevada’s workers and employers. Vote “No” on Question 2.

## FISCAL NOTE

### **Financial Impact—Cannot be Determined**

Under the current constitutional and statutory provisions for the State’s minimum wage, employers, including the State and local governments, are required to pay nonexempt employees, effective July 1, 2024, a minimum wage rate of \$11 per hour, if certain health benefits are offered, or \$12 per hour, if certain health benefits are not offered. The provisions of Question 2 would replace these existing provisions with a constitutional requirement that employers, including the State and local governments, pay nonexempt employees, effective July 1, 2024, a minimum wage

rate of \$12 per hour, regardless of whether the employers offered certain health benefits to employees and their dependents.

The provisions of this ballot measure would directly affect only those employers, including the State and local governments, that would be paying nonexempt employees on July 1, 2024, less than \$12 per hour under the existing statutory minimum wage because those employers offered certain health benefits to employees and their dependents. It is unknown whether any employers, including the State and local governments, would be paying any nonexempt employees on July 1, 2024, less than \$12 per hour under the existing statutory minimum wage and, thereafter, would be required to pay the \$12 per hour minimum wage if the provisions of Question 2 become effective.

Additionally, it is unknown what impact, if any, there may be on the wages paid by employers, including the State and local governments, to employees who are not directly affected by the minimum wage provisions of Question 2. It is also unknown what impact, if any, may result to the health benefits offered or provided by employers based on the elimination of the existing constitutional provisions allowing a \$1 lower minimum wage if employers offered certain health benefits to employees and their dependents.

Thus, if Question 2 is approved, the fiscal impact on the State and local governments related to any wages and health benefits that will be provided to nonexempt employees on or after July 1, 2024, cannot be determined with any reasonable degree of certainty. Additionally, it is not possible to predict the impact, if any, that Question 2 would have on the wages that employers, other than the State and local governments, will pay to their nonexempt employees on or after July 1, 2024, or on the health benefits that these employees may or may not obtain on or after July 1, 2024. Therefore, the impact, if any, that Question 2 would have on certain taxes deposited in the State General Fund cannot be determined with any reasonable degree of certainty, including: (1) the Modified Business Tax, which is paid by an employer based on the amount of quarterly wages, less allowable health care expenses, paid to employees; and (2) the Insurance Premium Tax, which is paid by insurance companies based on the total net premiums written in this State.