



**OFFICE OF THE  
SECRETARY OF STATE**

September 7, 2021

**Re: Submission of Initiative Petition on General Election Ballot**

Dear Attorney General Ford,

The Office of the Secretary of State was made aware of an Attorney General's Opinion ("Opinion") dated July 28, 2021, that purported to address the conflicts between Article 19 Section 2 of the Nevada Constitution and NRS 295.026. The Office has reviewed the Opinion and considered both the state Constitution and the statute in an effort to resolve this discrepancy.

After the review, the Office has concluded that the Opinion fails to address the Constitutional imperative and compels the Secretary to act in a certain manner. Our Office maintains a different position than the Opinion with respect to the nature of the affirmative obligations imposed on the Secretary of State by the Nevada Constitution specifically with respect to initiative petitions that have been filed, verified, and submitted to the Legislature.

For example, Article 19 subsection 3 of Section 2 states that, for a petition which has obtained the required number of signatures, the Secretary of State "shall transmit such petition to the Legislature as soon as the Legislature convenes and organizes." It provides that "the petition shall take precedence over all other measures except appropriations bills." Once the petition has been submitted, the Legislature has 40 days to enact the statutory alteration without change or reject it. If the Legislature rejects the petition or fails to act upon it within those 40 days, "the Secretary of State shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election."

The use of the word "shall" in ordinary language imposes a mandatory, not discretionary, obligation. Merriam-Webster defines "shall" as "used in laws, regulations, or directives to express what is mandatory." Even the Nevada Legislature recognizes "shall" as imposing a mandatory duty by stating that the word "imposes a duty to act." NRS 0.025(1)(d). Although the Nevada Legislature can adopt statutes "for procedures to facilitate the operation" of the initiative process as provided in Article 19 Section 5, the affirmative duty imposed by the Nevada Constitution on the Secretary supersedes any statutory enactments by the Nevada Legislature that contradict the affirmative duty.

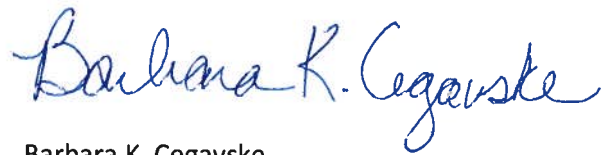
The Nevada Constitution requires the Secretary of State to follow a procedure once an initiative petition has obtained the required number of verified signatures. As such, a statute cannot interfere with that duty. Thus, when the Legislature rejects or fails to act on any initiative petition within the first 40 days of

the session, "the Secretary of State shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election."

Although our Office received a request to withdraw a petition which obtained the required number of signatures, and we submitted it to the Legislature in accordance with Article 19 Section 2, the Secretary of State anticipates following her duty to act as outlined in the Nevada Constitution by placing the initiative petition on the ballot during the 2022 general election for adoption or rejection by the voters.

If you have any questions, please contact the Elections Division at (775) 684-5705 or [NVElect@sos.nv.gov](mailto:NVElect@sos.nv.gov).

Respectfully,



Barbara K. Cegavske  
Secretary of State