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SUPPLEMENTAL STATEMENT OF JOHN H. GARVIN, CO-CHAIRPERSON OF THE DOUGLAS COUNTY SUSTAINABLE GROWTH INITIATIVE COMMITTEE IN OPPOSITION TO AB 428

In your further consideration of this bill, I would like to point out that NRS 278.210, and not NRS 278.220, is the proper place for any proposed change in procedure referred to in Section 1 of the Bill. To require the governing body to hold a hearing and make findings on proposed changes in the Master Plan without first having the Planning Commission perform its function under NRS 278.210 is putting the cart before the horse. For example, the required "finding" setting forth the need or rationale for a change or amendment of the Master Plan is a legitimate function of the Planning Commission which the governing body may or may not thereafter approve, change or turn down at its hearing. Subsection 4 of NRS 278.220 confirms the essential truth of this process where it states that any proposed changes by the governing body as to what is recommended by the Planning Commission must first be referred back to the Planning Commission.

Incidently, NRS 278.210 already requires a public hearing process by the Planning Commission who, inferentially, must at that hearing justify its recommendation to the governing body. The same is true as to the governing body under NRS 278.220 as part of its adoption or approval procedure. Thus, the question is why do you need to enact Section 1 when "findings" are already inherent in the process?

This really illustrates that the sole purpose of the bill is a bald-faced attempt to impose upon, impede, or otherwise restrict the use of the initiative process in the area of amending the Master Plan. As we pointed out before, Article 19, Sec.4, limits the Legislature's power to amend the initiative procedure under Chapter 295 to facilitate the process, not impede it. The term "facilitate" means to make it easier. AB 428 imposes upon the political process burdensome and costly procedures for the citizens to make findings which the backers of this bill can then use to challenge the initiative measure in court before the election. Further, what is the level of evidence required to support such "findings?" AB 428 is constitutionally suspect in these respects.

The historical approach of a political campaign remains the best approach for a full discourse of the merits or lack of merit of any initiative measure. It's an adversarial process. In our case, it worked well for both sides. Senator Amodei even moderated a televised town hall meeting wherein our slow growth initiative was vigorously debated by both sides. Further, the local District Attorney's function of approving or disapproving ballot arguments also operates to exclude questionable assertions. Remember, voters are not stupid. They turn down many initiative proposals. The system works. Don't tinker with Chapter 295.

Lastly, this is the first instance in which Chapter 295 is being amended to set forth substantive law on a narrow subject matter. Why is that fact significant? Because by hobbling the initiative process in this one narrow area - that is, proposed changes to the Master Plan, versus all other areas of thee law that can be the subject of an initiative process - a denial of equal protection of the law likely results. That would be unconstitutional under both the Federal and State Constitutions.

I would ask that you report back to your committee a recommendation of a "NO" vote on AB 428 or strike out all sections pertaining to the initiative process under Chapter 295.

GOVERNMENT AFFAIRS
SUBCOMMITTEE ON A.B. 428
DATE: April 4, 2003 EXHIBIT C
SUBMITTED BY: John Garvin